



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

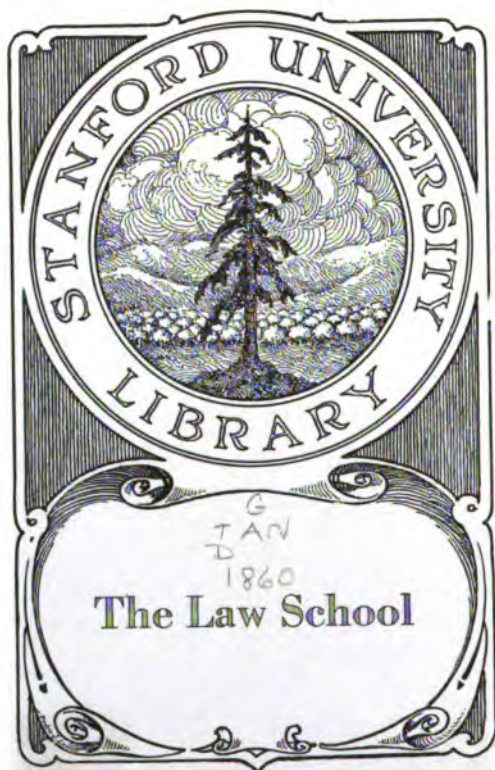
We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

9d.



The Laws of Jefferson Territory were generally enforced in the Territory from 1859 until the organization of Colorado Territory in 1861, though the eastern part of the Territory was then part of Kansas Territory. The only other laws that were then generally recognized in this Territory were the Mining District Laws, Rules and Regulations.

We have gathered the Mining Rules for 79 Districts in Colorado from 1859 to 1880, and will publish them if there is a sufficient demand. Many of the District Rules are Codes of Laws, covering both Civil and Penal in addition to Mines and Mining Claims.



PROVISIONAL LAWS

AND

JOINT RESOLUTIONS

PASSED AT THE FIRST AND CALLED SESSIONS

OF THE

GENERAL ASSEMBLY

OF

JEFFERSON TERRITORY,

**HELD AT DENVER CITY, J. T., NOVEMBER AND
DECEMBER, 1859, AND JANUARY, 1860.**

PUBLISHED BY AUTHORITY.

**OMAHA, N. T.:
ROBERTSON & CLARK, PRINTERS,
1860.**

111267
FEB 20 1936

PROVISIONAL TERRITORIAL OFFICERS

Governor

ROBERT W. STEELE.

Secretary

LUCIAN W. BLISS.

Treasurer

R. L. WOOTEN.

Auditor

C. R. BISSELL.

Judges of The Supreme Court

A. J. ALLISON, CHIEF JUSTICE.
L. W. BORTON, ASSOCIATE JUSTICE.
S. J. JOHNSON, ASSOCIATE JUSTICE.
OSCAR TOTTEN, CLERK.

Attorney-General

SAMUEL McLEAN.

Marshal

HICKORY ROGERS.

Superintendent of Public Instruction

H. H. McAFEE.

Commissioners To Codify The Laws

ELI CARTER.
ZAREMBA JACKSON.

VSANELL 0307412

LEGISLATURE

Council

HENRY ALLEN, PRESIDENT.
ELI CARTER, PRESIDENT PRO TEM.

W. D. ARNETT.
JAMES EMMERSON.
MARK A. MOORE.
D. SHAFER.
J. M. WOOD.
N. G. WYATT.

House of Representatives

JAMES A. GRAY, SPEAKER.

J. S. ALLEN.
WILLIAM DAVIDSON.
A. J. EDWARDS.
T. S. GOLDEN.
C. P. HALL.
J. N. HALLOCK.
M. D. HICKMAN.
ZAREMBA JACKSON.
S. B. KELLOGG.
EDWIN JAMES.
W. P. McCLURE.
A. McFADDEN.
JOHN C. MOORE.
MILES PATTON.
C. C. POST.
W. M. SLAUGHTER.
ASA SMITH.
J. S. STONE.
D. K. WALL.

PART FIRST.

CRIMINAL CODE.

AN ACT to adopt and establish a Criminal Code for the Territory of Jefferson.

CHAPTER I.

Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving.

OFFENCES AGAINST THE LIVES AND PERSONS OF INDIVIDUALS.

Murder.

SECTION 1. Whoever kills any human being with malice afore thought, either express or implied, is guilty of murder.

First Degree; Punishment.

SEC. 2. All murder which is perpetrated by means of poison, or lying in wait, or any other kind of wilful, deliberate and pre-meditated killing, or which is committed in the perpetration or attempt to perpetrate, any arson, rape, robbery, mayhem or burglary, is murder in the first degree, and shall be punished with death.

Second Degree; Punishment.

SEC. 3. Whoever commits murder otherwise than is set forth in the preceding section, is guilty of murder in the second degree, and shall be punished by imprisonment in the penitentiary for life, or for a term not less than ten years.

Trial for murder; How convicted.

SEC. 4. Upon the trial of an indictment for murder, the Jury, if they find the defendant guilty, must inquire, and by the verdict ascertain, whether he be guilty of murder of the first or second degree; but if such defendant be convicted on his own confession in open court, the court must proceed, by the examination of witnesses to determine the degree of murder and award sentence accordingly.

Manslaughter.

SEC. 5. Any person guilty of the crime of manslaughter, shall

be punished by imprisonment in the penitentiary not more than eight years nor less than one year, and by fine not exceeding one thousand dollars, nor less than one hundred dollars.

Mayhem.

SEC. 6. If any person, with intent to maim or disfigure, cut or maim the tongue, put out or destroy an eye, cut, slit, or tear off an ear, cut, slit, bite, or mutilate the nose or lip, or cut off or disable a limb, or any member of another person, he shall be punished by imprisonment in the penitentiary not more than five years, and by a fine not exceeding one thousand dollars, nor less than one hundred dollars.

Robbery.

SEC. 7. If any person, with force or violence or by putting in fear, steal and take from the person of another any property that is the subject of larceny, he is guilty of robbery, and shall be punished according to the aggravation of the offence, as is provided in the following two sections.

Punishment for robbery.

SEC. 8. If such offender, at the time of such robbery, is armed with a dangerous weapon, with intent, if resisted, to kill or maim the person robbed, or, if being so armed, he wound or strike the person robbed, or if he have any confederates, aiding or abetting him in such robbery, present and so armed, he shall be punished by imprisonment in the penitentiary for a term not exceeding twenty years, nor less than ten years.

SEC. 9. If such offender commits such robbery otherwise than is mentioned in the preceding section, he shall be punished by imprisonment in the penitentiary not exceeding ten years, nor less than two years.

Rape on female child.

SEC. 10. If any person ravish or carnally know any female of the age of ten years or more, by force, and against her will, or carnally know and abuse any female child under the age of ten years, he shall be punished by imprisonment in the penitentiary for life, or any term of years.

Rape.

SEC. 11. If any person take any woman unlawfully and, against her will, and by force menace, or compel her to marry him or any other person, or to be defiled, he shall be fined not exceeding one thousand dollars, and imprisoned in the penitentiary not exceeding ten years,

SEC. 12. If any person unlawfully have carnal knowledge of any female by administering to her any substances, or by any other means, producing such stupor, or such imbecility of mind, or weakness of body as to prevent effectual resistance, he shall,

upon conviction, be punished as provided in the section relating to ravishment.

Abducting a female for prostitution.

SEC. 13. If any person take or entice away any unmarried female under the age of fifteen years from her father, mother, guardian, or other person having the legal charge of her person, without their consent, for the purpose of prostitution, he shall, upon conviction, be punished by imprisonment in the penitentiary for not more than three years, or by fine of not more than one thousand dollars, and imprisoned in the county jail not more than one year.

Abducting children.

SEC. 14. If any person, maliciously, forcibly, or fraudulently lead, take, decoy, or entice away any child under the age of twelve years, with the intent to detain or conceal such child from its parent, guardian, or other person having the lawful charge of such child, he shall be punished by imprisonment in the penitentiary not more than ten years, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

Seduction.

SEC. 15. If any person seduce and debauch any unmarried woman, of previously chaste character, he shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding one thousand dollars, and imprisoned in the county jail not exceeding one year.

SEC. 16. If, before judgment upon an indictment, the defendant marry the woman thus seduced, it is a bar to any further prosecution for the offense.

Kidnapping.

SEC. 17. If any person wilfully and without lawful authority, forcibly or secretly confine or imprison any other person within this Territory against his will, or forcibly carry or send such person out of the Territory, or forcibly seize and confine, or inveigle, or kidnap any other person with the intent to cause such person to be secretly confined or imprisoned in this Territory, against his will, he shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding one thousand dollars, or by both fine and imprisonment, at the discretion of the court.

Abandoning child.

SEC. 18. If the father or mother of any child under the age of six years, or any person to whom such child has been entrusted or confided, expose such child in any highway, street, field, house or outshed, or in any other place, with intent wholly to abandon it, he or she, upon conviction thereof, shall be punished by imprisonment in the penitentiary not exceeding five years.

Extorting money.

SEC. 19. If any person, either verbally or by any written or printed communication, maliciously threaten to accuse another of a crime or offense, or to do any injury to the person or property of another, with intent thereby to extort any money or pecuniary advantage whatever, or to compel the person so threatened to do any act against his will, he shall be punished by imprisonment in the penitentiary not more than two years, or by fine not exceeding five hundred dollars.

Assault.

SEC. 20. If any person assault another with intent to commit murder, he shall be punished by imprisonment in the penitentiary not exceeding ten years.

Assault with intent to commit rape.

SEC. 21. If any person assault a female with intent to commit a rape, he shall be punished by imprisonment in the penitentiary not exceeding twenty years.

SEC. 22. If any person assault another with intent to maim, rob, steal, or commit arson or burglary, he shall be punished by imprisonment in the penitentiary not exceeding five years, or by fine not exceeding one thousand dollars, or by both fine and imprisonment, at the discretion of the court.

SEC. 23. If any person assault another with intent to inflict a great bodily injury, he shall be punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding five hundred dollars.

SEC. 24. If any person assault another with intent to commit any felony or crime punishable by imprisonment in the penitentiary, where the punishment is not otherwise prescribed, he shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not more than one year.

Poisoning.

SEC. 25. If any person mingle any poison with any food, drink, or medicine, with intent to kill or injure any human being, or wilfully poison any spring, well, cistern or reservoir of water, he shall be punished by imprisonment in the penitentiary not exceeding ten years, and by fine not exceeding one thousand dollars.

Punishment for assault.

SEC. 26. Whoever is convicted of an assault, or an assault and battery, when no other punishment is prescribed, shall be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding two hundred dollars, or both such fine and imprisonment, at the discretion of the court.

CHAPTER II.

OFFENCES AGAINST PROPERTY.

SEC. 27. If any person wilfully and maliciously burn in the night time, the inhabited building or boat of another, or wilfully and maliciously set fire to any other building or boat owned by himself or another, by the burning whereof such inhabited building or boat is burnt in the night time, he shall be punished by imprisonment in the penitentiary for life, or any term of years.

Burning a boat or building in the day time.

SEC. 28. If any person wilfully and maliciously burn, in the day time, the inhabited building or boat of another, or any building or boat adjoining thereto, or wilfully and maliciously set fire to any building or boat owned by himself or another, by the burning whereof such inhabited building or boat is burnt in the day time, or in the day time wilfully and maliciously set fire to any building or boat owned by himself or another, by the burning of which any inhabited building or boat is burnt in the night time, he shall be punished by imprisonment in the penitentiary for a term not exceeding thirty years.

Same in the night time.

SEC. 29. If any person wilfully and maliciously burn, in the night time, any uninhabited dwelling house or boat belonging to another, or any court house, jail, college, church or any building erected for public use, or any other building or boat, by the burning whereof any building or boat mentioned in this section is burnt in the night time, he shall be punished by imprisonment in the penitentiary not exceeding twenty years.

Punishment for above offence.

SEC. 30. If any person wilfully and maliciously burn, in the day time, any building or boat mentioned in the preceding section, he shall be punished by imprisonment in the penitentiary not exceeding fifteen years.

Burning other property.

SEC. 31. If any person wilfully and maliciously burn, either in the night or day time, any warehouse, store, manufactory, railroad depot, barn, stable, shop, office, out house or any building whatsoever, of another, other than is mentioned in the preceding section of this chapter, or any bridge, lock, dam or flume, he shall be punished by imprisonment in the penitentiary not exceeding ten years.

Same.

SEC. 32. If any person set fire to any building or boat mentioned in the preceding sections of this chapter, or to any material, with intent to cause any such building or boat to be burnt, he shall

be punished by imprisonment in the penitentiary not exceeding five years, or by fine not exceeding one thousand dollars and imprisonment in the county jail not more than one year.

Burning wood or lumber.

SEC. 33. If any person wilfully and maliciously burn, or otherwise destroy or injure, any pile or parcel of wood, boards, timber or other lumber, or any fence, bars or gate, or any stack of grain, hay or other vegetable product severed from the soil and not stacked, or any standing trees, grain, grass or other standing product of the soil of another he shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not exceeding one year.

SEC. 34. The preceding sections of this chapter severally extend to a married woman who commits either of the offences therein described, though the property burnt or set fire to may belong partly or wholly to her husband.

Burning Warehouse to injure insurer.

SEC. 35. If any person wilfully burn any building, goods, wares, merchandise or other chattels, which are insured against loss or damage by fire, or wilfully cause or procure the same to be burned, with intent to injure the insurer, whether such person be the owner of such property or not, he shall be punished by imprisonment in the penitentiary not exceeding ten years.

Breaking open dwelling house.

SEC. 36. If any person break and enter any dwelling house in the night time, with intent to commit the crime of murder, rape, robbery, larceny or any other felony, in the night time, any person being then lawfully therein, such offender shall be punished according to the aggravation of the offense, as is provided in the following two sections.

Burglary.

SEC. 37. If such offender, at the time of committing such burglary, is armed with a dangerous weapon, or so arm himself after having entered such dwelling house, or actually assaulting any person being lawfully therein, or having any confederate present, aiding and abetting in such burglary, he shall be punished by imprisonment in the penitentiary for life, or any term of years.

Punishment for burglary.

SEC. 38. If such offender commit such burglary otherwise than is mentioned in the preceding section, he shall be punished by imprisonment in the penitentiary not exceeding twenty years.

SEC. 39. If any person, with intent to commit a felony, in the

day time, break and enter, or in the night time enter without breaking, any dwelling house, or at any time break and enter any office, shop, store, warehouse, boat or vessel, or any building in which any goods, merchandise or valuable things are kept, for use, sale, or deposit, he shall be punished by imprisonment in the penitentiary not more than ten years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not more than one year.

CHAPTER III.

LARCENY, AND RECEIVING STOLEN GOODS.

Larceny.

SEC. 40. If any person steal, take or convey away any of the property of another, any money, goods or chattels, any writ, process or public record, any bond, bank note, promissory note, bill of exchange or other bill, order or certificate, or any book of accounts respecting money, goods or other things, or any deed or writing, containing a conveyance of real estate, or any contract in force, or any receipt, release or defeasance, or any instrument or writing whereby any demand, right or obligation is created, increased, extinguished or diminished, he is guilty of larceny, and shall be punished, when the value of the property stolen exceeds the sum of twenty dollars, by imprisonment in the penitentiary not more than five years; and when the value of the property stolen does not exceed the sum of twenty dollars, by fine not exceeding one hundred dollars and imprisoned in the county jail not exceeding one year.

Same.

SEC. 41. If any person, in the night time, commit larceny in any dwelling house, store or any public or private building, or in any boat or water craft, when the value of the property stolen exceeds the sum of twenty dollars, he shall be imprisoned in the penitentiary not exceeding ten years; and when the value of the property stolen is less than twenty dollars, by fine not exceeding three hundred dollars and imprisonment in the county jail not exceeding one year.

Personating another.

SEC. 42. If any person falsely personate or represent another, and in such assumed character receive any money or property intended to be delivered to the party so personated, with intent to convert the same to his own use, he is guilty of larceny, and shall be punished accordingly.

Finding property.

SEC. 43. If any person come, by finding, to the possession of any personal property, of which he knows the owner, and unlawfully appropriate the same, or any part thereof, to his use, he is guilty of larceny, and shall be punished accordingly.

Embezzlement by public officers.

SEC. 44. If any officer within this Territory, charged with the collection, safe keeping, transfer or disbursment of public money, unlawfully convert to his own use, in any way whatever, or use by way of investment in any kind of property, or loan, without the authority of law, any portion of the public money entrusted to him for collection, safe keeping, transfer or disbursment, every such act is an embezzlement of so much of said money as is thus taken, converted, invested, used, loaned, or unaccounted for, and, on conviction thereof, he shall be imprisoned in the penitentiary not exceeding five years, and fined in a sum equal to the amount of money embezzled; and, moreover, he is forever afterward disqualified from holding any office, under the laws or constitution of this Territory.

Embezzlement by clerks, servants, &c.

SEC. 45. If any officer, clerk, agent or servant of any incorporated company, or if any clerk, agent or servant of a copartnership, or of any person over the age of sixteen years embezzle and fraudulently convert to his own use, or take and secrete, with intent to convert to his own use, without the consent of his employer or master, any money or property of another, which has come to his possession, or is under his care by virtue of such employment, he is guilty of larceny, and shall be punished accordingly.

By carriers.

SEC. 46. If any carrier or other person, to whom any money, goods or other property which may be the subject of larceny, has been delivered, to be carried for him, or if any other person intrusted with such property, embezzle or fraudulently convert to his own use any such money, goods or other property, either in the mass as the same were delivered, or otherwise, and before the same were delivered at the place, or to the person where, and to whom, they were to be delivered, he is guilty of larceny, and shall be punished accordingly.

Receiving stolen property.

SEC. 47. If any person buy, receive, or aid in concealing any stolen money, goods, or any property, the stealing of which is declared to be larceny, or property obtained by robbery or burglary, knowing the same was so obtained, he shall be punished by imprisonment in the penitentiary not more than five years, or by

fine not exceeding five hundred dollars and imprisonment in the county jail not more than one year.

Larceny—2d offence.

SEC. 48. If any person having been before convicted of larceny, afterward commit another larceny, and be thereof convicted, or if any person, at the same term of court, is convicted as principal or as accessory, after the fact in three distinct larcenies, he is deemed a common and notorious thief, and shall be punished by imprisonment in the penitentiary for not less than five years.

Receiving stolen goods—2d offence.

SEC. 49. If any person, after having been convicted of the offences of buying, receiving, or aiding in the concealment of stolen money, goods or any property, the stealing of which is larceny, or property obtained by robbery or burglary, be again convicted of the like offense, or if an person, at the same term of court is convicted of three distinct acts of buying, receiving, or aiding in the concealment of stolen money, goods or any property obtained by robbery or burglary, knowing the same was so obtained, he shall be punished as provided in the preceding section.

Bank bills, &c.

SEC. 50. If the property stolen consists of any bank note, bond, bill, covenant, bill of exchange, draft, order or receipt, or any evidence of debt whatever, or any public security, the money due thereon, or the value of the property affected, as the case may be, shall be adjudged the value of the things stolen.

CHAPTER IV.

FORGERY AND COUNTERFEITING.

Forgery.

SEC. 51. If any person, with intent to defraud, falsely make, alter, forge or counterfeit any public record; any charter, deed, will, testament, bond, writing, obligatory, power of attorney, letter of credit, policy of insurance, bill of lading, bill of exchange, promissory note or any other instrument in writing, being or purporting to be the act of another, by which any pecuniary demand or obligation, or any right or interest in or to any property whatever, is, or purports to be, created, increased, conveyed, discharged or diminished, he shall be punished by imprisonment in the penitentiary not more than ten years.

SEC. 52. If any person utter and publish, as true, any record, process, certificate, deed, will or any other instrument of writing

mentioned in the preceding section, knowing the same to be false, altered, forged or counterfeited, with intent to defraud, he shall be punished by imprisonment in the penitentiary not more than fifteen years, and fined not exceeding one thousand dollars.

Forging notes, certificates, &c.; Punishment therefor.

SEC. 53. If any person, with intent to defraud, falsely make, alter, forge or counterfeit any note, certificate, territorial bond, warrant or other instrument, being public security for money or other property, issued or purporting to be issued by authority of this Territory, or any of the States or Territories of the United States, or any indorsement or other writing, purporting to transfer the right of interest of any holder of such public security, any bank bill, promissory note, draft or other evidence of debt, issued or purporting to be issued by any corporation or company, duly authorized for that purpose by any Territory or State of the United States, or any other government or country, with intent to injure or defraud, he shall be punished by imprisonment in the penitentiary not more than ten years, or by fine not exceeding three hundred dollars and imprisonment in the county jail not exceeding one year.

Having forged or counterfeit bill, or note, &c. in possession.

SEC. 54. If any person has in his possession any forged, counterfeit or altered bank bill, promissory note, draft or other evidence of debt, issued, or purporting to be issued, as is mentioned in the preceding section, with intent to defraud, knowing them to be so forged, counterfeited or altered, he shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding two hundred dollars, and imprisonment in the county jail not exceeding one year.

Uttering counterfeit money.

SEC. 55. If any person utter or pass, or tender in payment, as true, any false, altered, forged or counterfeit note, certificate, Territorial warrant, bond or other instrument of public security, or any bank bill, promissory note, draft or other evidence of debt, issued or purporting to be issued by any corporation or company duly authorized, as heretofore mentioned, knowing the same to be false, altered, forged or counterfeited, with intent to injure or defraud, he shall be punished by imprisonment in the penitentiary not more than ten years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not exceeding one year.

Keeping plate, press, or tools for counterfeiting.

SEC. 56. If any person make, engrave, mend or have in his possession, any plate, press, moulds, instruments or other tools, which are, or may be, used or designed for forging or making the

aforesaid false or counterfeit papers, or any counterfeit or bogus coin, with intent to use the same, or cause or permit the same to be used, shall be punished by imprisonment in the penitentiary for not more than five years.

Making or passing counterfeit coin.

SEC. 57. If any person forge or counterfeit any gold or silver coin, current by law or usage within this Territory, or if any person have in his possession any number of pieces of such false or counterfeit coin, with intent to pass the same as true, and any person who passes or tenders in payment any such false or counterfeit coin, and knowing the same to be false, shall be punished by imprisonment in the penitentiary not exceeding eight years, or fine not more than five hundred dollars and imprisoned in the county jail not exceeding one year.

Connecting together different parts of a genuine bill so as to produce a counterfeit.

SEC. 58. If any person fraudulently connect together different parts of several genuine bills, notes or other instruments, so as to produce one of a different kind of denomination, or if any fictitious or pretended signature of any man, officer or agent of any corporation be fraudulently affixed to any instrument of writing, the same is a forgery, though no such officer, agent or corporation ever existed; or if any total or partial erasure or obliteration of any note, bond, bill, certificate or other instrument of writing mentioned in this chapter, with intent to defraud, the same shall be deemed a forgery, and the offender shall be punished by imprisonment in the penitentiary not exceeding five years, or by fine not exceeding one thousand dollars and imprisonment in the county jail not exceeding one year.

Altering seal; How punished.

SEC. 59. Every person who is convicted of having forged, counterfeited or falsely altered the great seal of this Territory, or the seal of any public office authorized by law, or the seal of any court, corporation, city or county, or who falsely makes, forges or counterfeits any impression purporting to be the impression of any such seal, with intent to defraud, shall be punished by imprisonment in the penitentiary not exceeding ten years.

CHAPTER V.

OFFENCES AGAINST PUBLIC JUSTICE.

Of perjury, and its punishment.

SEC. 60. If any person, on oath or affirmation, lawfully administered, wilfully and corruptly swear or affirm falsely to any

material matter in any proceeding in any court of justice, or before any officer thereof, or before any tribunal or officer created by law, or in any proceeding, or in regard to any matter or thing in, or respecting which, an oath or affirmation is or may be required or authorized by law, he is guilty of perjury, and shall be punished by imprisonment in the penitentiary not exceeding ten years, or by fine not exceeding one thousand dollars, or confinement in the county jail not exceeding one year.

Corrupting officers.

SEC. 61. If any person directly or indirectly give, offer or promise any valuable consideration or gratuity to any officer of the United States or of this Territory, with intent to influence, bias or prejudice any official act of such officer, he shall be guilty of a misdemeanor, and shall be punished accordingly.

Officer accepting bribe.

SEC. 62. If any officer of the United States or of this Territory, accept any valuable consideration or gratuity, or any benefit whatever, by the which any of his official acts may be biased or prejudiced in any way whatever, he shall be guilty of a misdemeanor. Appraisers, Arbitrators, referees and jurors shall be officers within the prohibition of this section.

Same.

SEC. 63. If any sheriff, deputy, sheriff, constable or coroner receive from a defendant or any other person, any money or other valuable thing, as an inducement or consideration for omitting or delaying to arrest any defendant, or to carry him before a magistrate or to prison, or for postponing, delaying or neglecting the sale of property on execution, or for omitting or delaying to perform any other duty pertaining to his office, he shall be guilty of a misdemeanor.

Same.

SEC. 64. If any officer authorized to serve process, wilfully refuse to execute any lawful process to him directed, requiring him to apprehend or confine any person charged with or convicted of any public offence, or wilfully delay or omit to execute such process, whereby such person escape, he shall be guilty of a misdemeanor.

Receiving greater fee than is allowed by law.

SEC. 65. If any person corruptly and wilfully demand and receive of another, for performing any service or official duty, for which the fee or compensation is established by law, any greater fee or compensation than is allowed or provided for the same, or if any witness falsely and corruptly certify that, as such, he has traveled more miles, or attended more days than he has actually traveled or attended, he shall be guilty of a misdemeanor.

Taking bribe for suppression of evidence of a crime.

SEC. 66. If any person, having knowledge of the commission of any offense punishable with death or imprisonment for life, take any money, or valuable consideration or gratuity, or any promise therefor, upon an agreement or understanding, express or implied, to compound or conceal such offense, or not to prosecute the same, or not to give evidence thereof, he shall be guilty of a misdemeanor.

Punishment for same.

SEC. 67. If any person having knowledge of the commission of any offense punishable by imprisonment in the penitentiary for a limited term of years is guilty of the offense described in the preceding section, he shall be punished by imprisonment in the county jail not more than one year, and by fine not exceeding four hundred dollars.

Officer suffering prisoners to escape.

SEC. 68. If any jailor or other officer, voluntarily, suffer any prisoner in his custody upon charge or conviction of any public offense, to escape, he shall be guilty of a misdemeanor.

Aiding in the escape of persons charged with crime.

SEC. 69. Every person who aids or assists any person in escaping or attempting to escape from the custody of any sheriff, marshal, constable or other officer or person who has the lawful charge of such prisoner, upon any criminal charge, or from the penitentiary or jail, or any place of confinement, shall be guilty of a misdemeanor.

Resisting officer.

SEC. 70. If any person knowingly and wilfully resist or oppose any officer of this Territory, or any person authorized by law, in serving or attempting to execute any legal writ, rule, order or process whatsoever, he shall be guilty of a misdemeanor.

Refusing to assist an officer in the execution of process.

SEC. 71. If any person being lawfully required by any sheriff, deputy sheriff, coroner, constable or other officer, wilfully neglect or refuse to assist him in the execution of his office in any criminal case, or in case of escape or rescue, he shall be guilty of a misdemeanor.

Falsely personating an officer.

SEC. 72. If any person falsely assume to be a judge, justice of the peace, magistrate, sheriff, deputy sheriff, coroner or constable, and take upon himself to act as such, he shall be guilty of a misdemeanor.

False returns.

SEC. 73. If any public officer fraudulently make or give false entries, or false returns, or false certificates or receipts in cases

where entries, returns, certificates or receipts are authorized by law, he shall be deemed guilty of a misdemeanor.

SEC. 74. When the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed, the doing of such act is a misdemeanor.

Punishment of crimes above enumerated.

SEC. 75. Every person who is convicted of a misdemeanor, or of any of the crimes enumerated in this chapter, shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding three thousand dollars, or by imprisonment in the county jail not exceeding one year or by fine and imprisonment, at the discretion of the jury.

Officers guilty of the above offenses, disqualified for holding office.

SEC. 76. If any person holding office in this Territory is charged or arrested for the commission of any of the crimes and misdemeanors enumerated in this chapter, he shall be temporarily suspended from the performance of any of the duties of his office; and, if convicted of any such misdemeanor, he shall be forever removed from his office; and no person who has been convicted of any of the crimes enumerated in this chapter, shall be eligible to any office in this Territory under the laws thereof, or the laws of the United States.

CHAPTER VI.

MALICIOUS MISCHIEF AND TRESPASS ON PROPERTY.

Killing horses or other animals.

SEC. 77. If any person maliciously kill, maim or disfigure any horses, cattle or other domestic beast of another, or maliciously administer poison to any such animals, or expose any poisonous substance with intent that the same should be taken by them, he shall be guilty of a misdemeanor.

Injuring or destroying a dam, canal, &c.

SEC. 78. If any person maliciously injure or destroy any dam, lock, canal, trench or reservoir, or any of the appurtenances thereof, or any of the gear or machinery of any mill or manufactory, or maliciously draw off the water from any mill, pond, reservoir, canal or trench, or destroy, injure or render useless any engine or the apparatus thereto belonging, prepared or kept for the extinguishment of fires, he shall be guilty of a misdemeanor.

Destroying bridge or plank road, or obstructing same; Obstructing a bridge or road.

SEC. 79. If any person maliciously injure remove or destroy any bridge, rail or plank road, or place or cause to be placed any

obstruction on such bridge or road, or wilfully obstruct or injure any public road or highway, or maliciously cut, burn, or in any way break down, injure or destroy any telegraph post or in any way cut, break or injure the wires or any apparatus thereto belonging, he shall be guilty of a misdemeanor.

Destroying or injuring a boat, raft, vessel, &c.

SEC. 80. If any person maliciously cut away, let loose, injure or destroy any boom or raft of wood logs, or other lumber, or any boat or vessel fastened to any place, of which he is not the owner or legal possessor, he shall be guilty of a misdemeanor, and shall also forfeit to the use of the person so injured double the amount of damages by him thereby sustained to be recovered in action at law.

Cutting trees, or throwing down fence to injure another.

SEC. 81. If any person maliciously cut down, injure or destroy any fruit or ornamental tree, vine or shrub, of another standing or growing for ornament or use, or maliciously break down, mar, deface or injure any fence, throw down or open any gate or bars, not his own, or under his charge, and leaves them open, whereby an injury is done to another or maliciously injure, destroy or sever from the land of another any produce thereof, or any thing attached thereto, he shall be guilty of a misdemeanor.

Removing monument, post, or tree, used to mark boundaries, &c.

SEC. 82. If any person maliciously take down, injure, or remove any monument erected, or any tree marked as a boundary of any tract of land, city, town or lot, or destroy, deface or alter the marks of any such monument or tree made for the purpose of designating such boundary, or injure or deface any mile stone, post or guide board erected on any public way, or remove, deface, or injure any sign board, or break or remove any lamp or lamp posts, or extinguish any lamp on any bridge-way, street or passage, he shall be guilty of a misdemeanor.

Carrying away stone, copper, lead or other ore.

SEC. 83. If any person wilfully commit any trespass by digging or carrying away any earth, stone, marble, slate, coal, copper, lead, iron ore, or any other ore or metal, or carrying away from any wharf, street, or landing place, any goods whatever, in which he has no interest, he shall be guilty of a misdemeanor.

Trespass on garden or orchard.

SEC. 84. If any person wilfully commit any trespass by entering upon the garden, orchard, or improved land of another with intent to take, carry away, destroy, or injure the trees, shrubs, grain, grass, hay, fruit or vegetables there being, he shall be guilty of a misdemeanor.

Injuring building.

SEC. 85. If any person maliciously injure, deface, or destroy any building or fixture attached thereto, or wilfully and maliciously destroy, injure or secrete any goods, chattles, or valuable papers of another, he shall be guilty of a misdemeanor.

Destroying transcript, &c.

SEC. 86. If any person intentionally deface or destroy in whole or in part any transcript or extract from, or of any law of the United States, or of this Territory, or any proclamation, advertisement or notification, set up at any place within this Territory by authority of law or by order of any court, during the time for which the same is to remain set up, he shall be guilty of a misdemeanor.

Punishment for above crimes.

SEC. 87. If any person be found guilty of any crime or misdemeanor enumerated in this chapter, he shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year.

CHAPTER VII.

OFFENCES AGAINST THE RIGHT OF SUFFRAGE.

Illegal voting.

SEC. 88. If any elector unlawfully vote more than once at any election which may be held by virtue of any law of this Territory, he shall be guilty of a misdemeanor.

Same.

SEC. 89. If any person knowing himself not to be qualified to vote at any election authorized by law, he shall be guilty of a misdemeanor.

Preventing others from voting.

SEC. 90. If any person unlawfully or by force or threats of force, prevent or endeavor to prevent, an elector from giving his vote at any public election in this Territory in accordance with his own wishes, or prevent him from voting he shall be guilty of a misdemeanor.

False entries in poll books; Destroying ballots.

SEC. 91. If any judge or clerk of any election authorized by law, knowingly make, or consent to any false entry on the list of voters or poll books, or put in the ballot-box, or permit to be so put in, any ballot not given by a voter, or take out of such box, or permit to be so taken out, any ballot deposited therein, except in the manner prescribed by law, or by any other act or omission, designedly destroy or change the ballots given by electors, he shall be guilty of a misdemeanor.

Officers neglecting duty.

SEC. 92. When any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every wilful neglect to perform such duty where no special provision has been made for the punishment of such delinquency is a misdemeanor.

Punishment for crimes enumerated in this chapter.

SEC. 93. Any person who shall be convicted of any of the crimes or misdemeanors enumerated in this chapter, shall be punished by a fine not exceeding one thousand dollars, or imprisonment in the county jail for a term not exceeding one year, and shall be disqualified from holding any office under the laws of this Territory.

CHAPTER VIII.

OFFENCE AGAINST CHASTITY, MORALITY, AND CONSPIRACY.

Bigamy.

SEC. 94. Any person who has had a former husband or wife living, marry another person or continue to cohabit with such second husband or wife in this Territory, he or she, except in the cases mentioned in the following section, is guilty of bigamy and shall be punished for misdemeanor.

SEC. 95. Every unmarried person who knowingly marries the husband or wife of another, when such husband or wife is guilty of bigamy thereby, shall be guilty of a misdemeanor.

Enticing female to house of ill fame.

SEC. 96. If any person inveigle or entice any female before reputed virtuous to a house of ill fame, or knowingly conceal or aid, or abet in concealing such female so deluded or enticed for the purpose of prostitution or lewdness, he shall be guilty of a misdemeanor.

Disintering body; Exposing or throwing away corpse.

SEC. 97. If any person without lawful authority wilfully dig up, disinter, remove or carry away any human body or the remains thereof, from its place of interment, or aid or assist in so doing, or wilfully receive, conceal or dispose of any such human body or remains thereof, or if any person wilfully and unnecessarily and in an improper manner indecently expose, throw away or abandon any human body, or the remains thereof, in any public place or in any river, stream, pond, or other place, every such offender shall be guilty of a misdemeanor.

Disturbing burial grounds.

SEC. 98. If any person wilfully destroy or injure any tomb, grave-stone, monument, or other thing placed or designated as a

memorial to the dead, or any fence, railing, or other thing placed above the same or any place enclosed, for the burial of the dead, or wilfully destroy or injure or remove any tree, shrub, or plant within such inclosure, he shall be guilty of a misdemeanor.

Conspiracy.

SEC. 99. If two or more persons conspire or confederate together with intent, falsely and maliciously to cause, or procure another person to be indicted or in any way impleaded or prosecuted for an offense of which he is innocent, whether such person be so impleaded, indicted or prosecuted or not, they shall be deemed guilty of a conspiracy.

Injuring the person, character, &c, of another; Punishment of offences enumerated in this chapter.

SEC. 100. If any two or more persons conspire or confederate together, with the fraudulent or malicious intent, wrongfully to injure the person, character, business or property of another, or to do any illegal act, injurious to the public trade, health, morals, or police, or to the administration of public justice, or to commit any felony, they are guilty of a conspiracy, and every person who is convicted of conspiracy or misdemeanor as enumerated in this chapter, shall be punished by imprisonment in the penitentiary not more than three years, or by fine not exceeding one thousand dollars and imprisonment in the county jail not more than one year.

CHAPTER IX.

OFFENCES AGAINST THE PUBLIC PEACE.

Disturbing religious meetings.

SEC. 101. If any person wilfully disturb or disgust any assembly of persons met for religious worship, by profane discourse or rude and indecent behavior, or by making a noise, either within the place of worship, or so near as to disturb the order and solemnity of the assembly, he shall be guilty of a misdemeanor.

Fighting by agreement.

SEC. 102. If two or more persons, voluntarily or by agreement, engage in any fight or use any blows or violence toward each other, in an angry or quarrelsome manner, in any public place, to the disturbance of others, shall be guilty of a misdemeanor.

Riot.

SEC. 103. When three or more persons in a violent or tumultuous manner, assemble together to do an unlawful act, when together, attempt to do an act, whether lawful or unlawful, in an unlawful, violent or tumultuous manner, to the disturbance of others, they are guilty of riot.

Making disturbance at elections &c.

SEC. 104. If any person make, or excite any disturbance in any tavern, store or grocery, or at any election or public meeting, or in any other place where the citizens are peacefully and lawfully assembled, he shall be guilty of a misdemeanor.

Punishment for riot.

SEC. 105. Any person guilty of unlawfully assembling, or of a riot, may alone be indicted and convicted thereof; but it must be alledged in the indictment and proved on the trial that three or more persons were engaged therein.

Punishment for crimes enumerated in this chapter.

SEC. 106. If any person be convicted of any of the crimes or misdemeanors heretofore enumerated in this chapter, he shall be punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not more than six months.

Injuring or destroying dwelling house, or other property.

SEC. 107. If any person or persons unlawfully or riotously assemble, pull down or injure or destroy, or bargain to pull down, injure or destroy, any dwelling house or other building, or destroy or attempt to injure or destroy any boat or vessel, or perpetrate any premeditated injury on the person or property of another, not heretofore enumerated, shall be guilty of misdemeanor, and punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not more than one year, and shall be answerable to any person injured to the full amount of the damages by him sustained in an action at law.

CHAPTER X.

CHEATING BY FALSE PRETENCES AND FRAUD.

Obtaining goods under false pretences.

SEC. 108. If any person designedly and by false pretence, or by any privy or false token, and with intent to defraud, obtain from another any money, goods, or other property, or so obtain the signature of any person to any written instrument, the false making of which, would be punished as forgery, he shall be punished by imprisonment in the penitentiary not more than seven years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not exceeding one year.

Using false weights or measures.

SEC. 109. If any person with intent to defraud, use a false balance, weight or measure, in the weighing, or measuring of any thing whatsoever, that is purchased, sold, bartered, shipped or

delivered, for sale or barter, or that is pledged or given in payment, he shall be guilty of a misdemeanor.

Altering stamps, brands or mark.

SEC. 110. If any person falsely alter any stamp, brand or mark, on any cask, package, box or bale, containing merchandise or produce, made by a public officer appointed for that purpose in order to denote the quality, weight or quantity of the contents thereof, with intent to defraud, he shall be guilty of a misdemeanor.

Evading license.

SEC. 111. If any person carry on or transact any business or occupation without license therefor, when such license is required by any law of this Territory, he shall be guilty of a misdemeanor.

Punishment for violation of the three preceding sections.

SEC. 112. If any person be convicted of any of the crimes or misdemeanors enumerated in the three preceding sections of this chapter, he shall be punished by imprisonment in the county jail not more than six months, or by fine not exceeding five hundred dollars.

CHAPTER XI.

GENERAL DEFINITIONS AND PROVISIONS AS TO CRIMES AND OFFENCES.

SEC. 113. Public offences are divided into felonies and misdemeanors.

Definition of a felony.

SEC. 114. A felony is an offence punishable with death or by imprisonment in the penitentiary of this Territory, and every other criminal offence is a misdemeanor.

SEC. 115. No person can be punished for a public offence, except upon legal conviction in a court having jurisdiction thereof.

Prosecutions—how conducted.

SEC. 116. All criminal prosecutions shall be commenced, and carried on in the name of the Territory of Jefferson.

Prosecuting but once for same offence.

SEC. 117. No person shall be subject to a second prosecution for a public offence, for which he has once been prosecuted and legally convicted or acquitted.

SEC. 118. The general term, "whoever," "any person," "any one," and the pronouns, "he," and "they," as referring to these terms as used in this code, include females as well as males as the sense of application may require.

SEC. 119. The use of any word expression of a "relationship," office, "or tract of any person," or the pronouns "he" and "they,"

in reference thereto, includes both males and females; and words used in the masculine gender include the feminine gender according to the application required.

SEC. 120. The use of the singular number includes the plural, and the plural the singular; and the word "person" or "party," or any other general term is equally applicable to the singular or plural, and may be extended to the Territory when any of the property or interests of the Territory require it.

SEC. 121. The word "writing" includes "printing;" the word "oath" includes "affirmation," and the word "signature" includes the mark of a person unable to write his name.

CHAPTER XII.

THE PREVENTION OF PUBLIC OFFENCES.

SEC. 122. Lawful resistance to the commission of a public offence may be made by the party about to be injured or by others.

Resisting offences.

SEC. 123. Resistance sufficient to prevent the offence, may be made by the party about to be injured:

First: To prevent an offence against his person.

Second: To prevent an illegal attempt by force, to take or injure property in his lawful possession.

SEC. 124. Any other person in aid or defence of the person about to be injured, may make resistance sufficient to prevent the offence.

SEC. 125. Public offences may be prevented by the intervention of the officers of justice:

First: By requiring security to keep the peace.

Second: By forming a police in cities and villages, and by requiring their attendance in exposed places.

Third: By suppressing riots.

SEC. 126. Whenever the officers of justice are authorized to act in the prevention of public offences, other persons, who by their command act in their aid, are justified in so doing.

CHAPTER XIII.

SECURITY TO KEEP THE PEACE.

Preservation of public peace.

SEC. 127. The judges of the supreme, district and county courts, mayors of cities or towns, and justices of the peace, are magistrates and have power to cause all laws made for the

preservation of the public peace, to be kept, and in the execution of that power, may require persons to give security to keep the peace in the manner provided in this chapter.

Proceedings to keep the peace.

SEC. 128. Whenever complaint is made to a magistrate that any person has threatened to commit any offence against the person or property of another, it is the duty of the magistrate to examine such complaints and any witnesses he may produce on oath, and to reduce such examination to writing, and cause the same to be subscribed by the parties so examined.

Magistrate to issue warrant for arrest of persons charged with intent to break the peace.

SEC. 129. If it appears from such examination, that there is just cause to fear the commission of any public offence, such magistrate must issue a warrant under his hand directed generally to the sheriff of the county, or any constable, marshal, or policeman of the city or town, reciting the information and commanding the officer to forthwith arrest the person complained of, and bring him before the magistrate.

Proceedings after arrest.

SEC. 130. When the person complained of, is brought before the magistrate, if the charge be controverted, the magistrate must take testimony in relation thereto. The evidence must be reduced to writing and subscribed by the witnesses.

Discharge of accused.

SEC. 131. If it appear that there is no just reason to fear the commission of the offence alledged, the person complained of must be discharged.

Accused held to bail.

SEC. 132. If there be just reason to fear the commission of the offence, the person complained of, may be required to enter into a recognizance in such sums as the magistrate may direct, with one or more sufficient sureties, to abide the order of the next district court of the county, and in the meantime to keep the peace toward the people of this Territory, and particularly toward the complainant.

Party discharged if giving required bail.

SEC. 133. If the recognizance required by the last section be given, the party complained of must be discharged. If he do not give it, the magistrate must commit him to prison, specifying in the warrant the requirements to give security, the amount thereof, and the omission to give the same.

SEC. 134. If the person complained of be committed for not giving a recognizance, he may be discharged by a magistrate upon giving the same.

Recognizance and Depositions.

SEC. 135. The recognizance, together with the complaint, depositions and other papers in the cause, must be returned by the magistrates to the District Court of the County, on the first day of the next term thereof.

Assault in presence of a Court or Magistrate.

SEC. 136. Any person, who, in the presence of a Court or Magistrate, shall assault, or threaten to assault, another, or to commit an offense against his person or property, may be ordered by the Court or Magistrate to give security as above provided in the section relating to keeping the peace.

Persons entering into recognizance must appear on first day of Term.

SEC. 137. A person who has entered into recognizance to keep the peace, must appear on the first day of the next term of the District Court of the County; and if the complainant appear and the defendant do not appear, the court may forfeit the recognizance, and order the same to be prosecuted.

Recognizance to be discharged when neither party appear.

SEC. 138. If neither the complainant nor the defendant appear, the court must discharge the recognizance on payment of costs by the defendant; but if both parties appear, the court may hear their proofs and allegations, and may either discharge the recognizance, or require a new one for a time not exceeding one year.

CHAPTER XIV.

POLICE IN CITIES AND VILLAGES AND THEIR ATTENDANCE AT EXPOSED PLACES.

SEC. 139. The organization and regulation of the police in cities and towns, shall be as regulated by law.

The Mayor of a city to preserve the peace.

SEC. 140. The mayor, or other officer having the direction of the police in a city or village, must order a force sufficient to keep the peace, and to attend any public meeting when he is satisfied that a breach of the peace is to be apprehended.

SEC. 141. If there be no police in such city or town, he may order out such a number of able-bodied citizens as he may deem necessary for the purpose of keeping the peace, as provided in the last section.

CHAPTER XV.

RESISTANCE OF PROCESS AND SUPPRESSION OF RIOTS.

Officer to call out posse to assist in serving process, when necessary.

SEC. 142. When a sheriff, or other officer authorized to execute process, finds, or has reason to apprehend, that resistance will be made in the execution thereof, he may command as many male inhabitants of his county as he may think proper, any military company or companies in the county, armed and equipped, to assist him in overcoming the resistance; and if necessary, in seizing, arresting and confining the resisters and their aiders and abettors to be punished by law.

SEC. 143. The officer shall certify to the court from which the process issued, the names of the resisters and their aiders and abettors, to the end that they may be punished for a contempt.

Refusing to obey officer.

SEC. 144. Every person commanded by a public officer to assist him in the execution of process, as provided in the first section of this chapter, who, without lawful cause, refuses or neglects to obey such command, is guilty of a misdemeanor.

When Governor may order out militia.

SEC. 145. If it appear to the Governor that the power of any county is not sufficient to enable the sheriff to execute process delivered to him, he may, on the application of the sheriff, order such posse or military force from any other county or counties, as is necessary.

Punishment for violation of provision of this chapter.

SEC. 146. If any person be convicted of any contempt or misdemeanor set forth in this chapter, he shall be punished by fine not exceeding three hundred dollars, or by imprisonment in the county jail not exceeding six months.

CHAPTER XVI.

THE LOCAL JURISDICTION OF PUBLIC OFFENSES.

Jurisdiction of sheriff in criminal offences.

SEC. 147. When a public offense has been committed, the jurisdiction is within the county in which it was committed; but the sheriff or officer making the arrest shall have jurisdiction over the whole Territory to serve the warrant.

Offense committed near boundary line of two or more counties.

SEC. 148. When a public offense is committed in part in one county and part within another, or when the acts or effects constituting or requisite to the consummation of the offense occur in two or more counties, jurisdiction is in either county.

SEC. 149. When a public offense is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction is in either county.

SEC. 150. When the offense of bigamy is committed in one county and the defendant is apprehended in another, the jurisdiction is in either county.

CHAPTER XVII.

LIMITATION OF INDICTMENTS AND PENAL ACTIONS.

SEC. 151. No person or persons shall be prosecuted, tried or punished for any offense denominated by the common law felony, (treason, murder, arson and forgery excepted) unless the indictment for the same shall be found by a grand jury within three years next after the offense shall have been done or committed. Nor shall any person be prosecuted, tried or punished for any misdemeanor or other indictable offense below the grade of felony, or for any fine or forfeiture under any penal statute, unless the indictment, information or action for the same shall be found or instituted within one year from the time of committing the offense or incurring the fine or forfeiture. *Provided*; That nothing herein contained shall extend to any person fleeing from justice. *And provided, also*; That where any suit, information or indictment for any crime or misdemeanor is limited by any statute to be brought or exhibited within any other time than is hereby limited, then the same shall be brought or exhibited within the time limited by such statute. *Provided, also*; That where any information, indictment or suit shall be quashed, or the proceedings on the same set aside or reversed, it shall not be reckoned within this statute so as to bar any new indictment, information or suit for the same offense.

CHAPTER XVIII.

INFORMATION AND MAGISTRATES.

SEC. 152. The information is the allegation made to a magistrate that a person has been guilty of some designated public offense.

Who are magistrates.

SEC. 153. The following persons are magistrates:

First: The Judges of the Supreme Court.

Second: The Judges of the District and County Courts.

Third: Justice of the Peace.

Fourth: Police and other special Justices in cities, towns and villages.

Fifth: The Mayors of cities and towns.

Magistrate to examine accused.

SEC. 154. When an information is laid before a magistrate, of the commission of a public offence triable within the county, he must examine on oath, the informant or prosecutor and any witness he may produce, and take their depositions in writing and cause them to be subscribed by the party making them.

Affidavits to set forth the facts.

SEC. 155. The affidavits must set forth the facts stated by the prosecutor and his witnesses, tending to establish the commission of the offence and the guilt of the defendant.

SEC. 156. If the magistrate be satisfied from such testimony, that the offence complained of has been committed, and that there is reasonable grounds to believe that the defendant has committed it, he shall issue a warrant of arrest.

Warrant to specify the named of accused and offence of which he is charged.

SEC. 157. The warrant must specify the name of the defendant, or if it be unknown to the magistrate, he may be designated therein by any name. It must also state an offence which authorizes the magistrate to issue the warrant, the time of issuing it, and the county, city or town, or village where it was issued, and must be signed by the magistrate with his name and office.

SEC. 158. The warrant must be directed to, and executed by a peace officer, and may be executed in any county of this Territory.

Who are Peace Officers.

SEC. 159. Peace officers are sheriffs of counties, constables, marshals and policemen of cities, towns and villages respectively.

Before whom offender to be brought.

SEC. 160. The officer making the arrest must take the defendant before the magistrate who issued it, or in the event of his absence or inability to act, before the nearest or most accessible magistrate in the county where the warrant was issued.

SEC. 161. In all cases where the defendant has been arrested, he must be taken before the magistrate without unnecessary delay.

SEC. 162. If the defendant be brought for examination before a magistrate of the county other than the one who issued the warrant, the affidavits on which the same was issued must be sent to such magistrate, or if they cannot be procured, the prosecutor and his witnesses must be summoned to give their testimony anew.

CHAPTER XIX.

ARREST BY AN OFFICER UNDER A WARRANT, AND WITHOUT A WARRANT.

Definition of arrest.

SEC. 163. Arrest is the taking of a person into custody that he may be held to answer for a public offence.

SEC. 164. An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of the officer.

Officer to show his warrant.

SEC. 165. The officer must inform the defendant, that he acts under the authority of a warrant, and must also show the warrant if required.

When arrest may be made without warrant.

SEC. 166. A peace officer may without a warrant arrest a person:

First: For a public offence committed or attempted in his presence.

Second: When a public offence has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

SEC. 167. When arresting a person without a warrant the officer must inform him of his authority, and the cause of the arrest, except when he is in the actual commission of the offence, or when he is pursued immediately after an escape.

SEC. 168. He may take before a magistrate any person who being engaged in the commission of a public offence is arrested by a by-stander and delivered to him.

Officer may break open door to arrest person who has violated certain sections of this act.

SEC. 169. To make an arrest, the officer may break open any outer or inner door or window of a dwelling house, if after notice of his office and person, he be refused admittance.

SEC. 170. If after notice of the intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest.

SEC. 171. When a public offence is committed in the presence of a magistrate, he may by verbal order command any person to arrest the offender, and may thereupon proceed as if the defendant had been brought before him on a warrant.

SEC. 172. If a person arrested escape or be rescued, the person from whose custody he made his escape or was rescued, may immediately pursue and retake him at any time, and within any place in the state.

CHAPTER XX.

EXAMINATION BY A MAGISTRATE.

Defendant to be allowed counsel.

SEC. 173. When the defendant is brought before a magistrate upon arrest, either with or without warrant, on a charge of having committed a public offence, the magistrate must immediately inform him of the offence with which he is charged, and of his right to the aid of counsel in every stage of the proceedings.

Magistrate must allow prisoner time to send for counsel.

SEC. 174. The magistrate must allow the defendant a reasonable time to send for counsel and if necessary must adjourn the examination for that purpose.

Examination to take place within a reasonable time.

SEC. 175. The magistrate immediately after the appearance of counsel, or if the defendant require the aid of counsel after waiting a reasonable time therefor must proceed to examine the case.

Examination must be terminated at one session.

SEC. 176. The examination must be terminated at one session, unless the magistrate for good cause shown adjourn it.

SEC. 177. No examination can be adjourned for a longer period than thirty days.

If case is adjourned, defendant must be held to bail.

SEC. 178. If an adjournment be had for any cause the magistrate shall commit the defendant for examination, or require him to give ample security for his appearance at the time and place to which the examination is adjourned.

SEC. 179. If the defendant is charged with an offence punishable by death, he must be committed.

SEC. 180. If there is no jail in the county, the sheriff must retain the defendant in his custody until the time of examination.

Complaint to be read, and witnesses subpoenaed.

SEC. 181. On the examination, the magistrate must in the first place read to the defendant the depositions of the witnesses on the taking of the information, and if the defendant request it must summon the witnesses so examined, if they be within the county. He shall also issue subpoenas for any additional witnesses required by the prosecutor or the defendant.

SEC. 182. When the examination of the witnesses on the part of the Territory is closed, the magistrate must inform the defendant that it is his right to make a statement explaining the charge made against him, or that he may waive the same and such waiver cannot be used against him on the examination before the magistrate on trial.

Questions to be asked defendant.

SEC. 183. If the defendant choose to make a statement, the magistrate shall proceed to take the same in writing without oath, and shall put to the defendant the following questions only:

What is your name and age?

Where were you born?

Where do you reside, and how long have you resided there?

What is your business or profession?

Give any explanation you think proper of the circumstances appearing in the testimony against you, and state any facts which you think may tend to your exculpation.

Answers of defendant must be written down.

SEC. 184. The answer of the defendant to each of the questions must be read to him as it is taken down, and he may thereupon correct or add to the same until it is made conformable to what he declares is the truth.

Answer to be signed.

SEC. 185. Such answer or statement of the defendant shall be signed by him, or if he refuse to sign it, his reasons for such refusal shall be stated by the magistrate.

SEC. 186. After the waiver of the defendant to make a statement, or after he has made it, his witnesses, if he produce any, may be sworn and examined.

Witness for defendant to be present.

SEC. 187. The witnesses on the part of the defendant must be present at the time he makes his statement.

Witnesses to be kept separate during examination.

SEC. 188. While a witness is under examination before the magistrate, he may exclude all others who have been examined. He may also cause the witnesses to be kept separate that they may not converse with each other until they are all examined.

Testimony must be reduced to writing.

SEC. 189. The testimony given on the part of the Territory and the defendant, must be reduced to writing by the magistrate, or under his direction, and must set forth the age and place of residence of the witness, and be signed by him.

Magistrates' certificate.

SEC. 190. After the examination is closed the magistrate must make out and annex to the depositions and statement his certificate which must set forth in substance:

First: The time and place of the examination.

Second: That the defendant made and signed the annexed statement, or if after making a statement he refused to sign it, the reasons of making such refusal must be set forth.

Third: That the witnesses named in the depositions were duly sworn and subscribed the same in the presence of the magistrate.

SEC. 191. Such certificate must be signed by the magistrate with his official name.

Proceedings when testimony insufficient to hold to bail.

SEC. 192. If after hearing the testimony and statement, it appear to the magistrate, either that a public offence has not been committed, or that there is no sufficient cause to believe the defendant guilty thereof, he must order the defendant to be discharged, and such order must be endorsed on the depositions and signed by the magistrate to the following effect: There being no sufficient cause to believe the within named defendant guilty of the offence herein mentioned, I have ordered him to be discharged.

Holding to answer offence.

SEC. 193. If it appear from the examination, that a public offence has been committed, and that there is sufficient cause to believe the defendant guilty thereof, the magistrate shall, in like manner, indorse on the depositions an order signed by him to the following effect: It appearing to me by the within depositions and statement (if any) that the offence therein mentioned (or any other offence, according to the fact) has been committed, and that there is sufficient cause to believe the within named defendant guilty thereof, I order that he be held to answer the same.

When committed to jail.

SEC. 194. If the offence is not bailable, the following word or words to the same effect must be added to the endorsement: "and that he be committed to the jail of the county of

To be committed when bail not given.

SEC. 195. If the offence is bailable, and bail be taken by the magistrate, the following words in substance must be added to the second endorsement above mentioned:—"and I have admitted him to bail to answer to the recognizance hereto annexed. If the defendant does not give bail, then the magistrate must add to the endorsement in substance as follows: "and that he be admitted to bail in the sum of (state amount) and committed to the jail of (name the county) until he gives such bail.

Of the commitment.

SEC. 196. If the magistrate order the defendant to be committed, he shall make out a warrant of commitment, signed by him, with his name of office, and deliver it with the defendant to the officer to whom he is committed, or if the officer be not present to a peace officer, who shall deliver the defendant in to the proper custody, together with the warrant of commitment, which warrant may be in the form following:

THE TERRITORY OF JEFFERSON.

To the Sheriff of _____ County.

An order having been this day made by me, that A—B (the name of the defendant) be held to answer upon a charge of (state the offence) you are commanded to receive him into your custody, and detain him in the jail of the county until he be legally discharged.

Dated at _____ this _____ day of _____ 18 .

Witnesses to enter into recognizance.

SEC. 197. On holding the defendant to answer, the magistrate must take from each material witness examined by him on the part of the Territory, a written recognizance to the effect, that he will appear and testify at the court to which the defendant is bound to answer, or he will forfeit the sum of one thousand dollars.

When sureties recognized.

SEC. 198. Whenever the magistrate is satisfied by oath, or otherwise, that there is reason to believe that any such witness will not fulfill his undertaking to appear and testify unless surety be required, he may order the witness to enter into a written recognizance with sureties, and in such sum as he may deem proper for his appearance.

SEC. 199. Infants and married women, who are material witnesses against the defendant, may in like manner be required to procure sureties for their appearance as provided in the proceeding section.

Witnesses who refuse to enter into recognizance, to be committed.

SEC. 200. If a witness required to enter into an undertaking to appear and testify, either with or without sureties, refuse compliance with the order for that purpose, the magistrate must commit him until he comply or be legally discharged.

Proceedings before a magistrate to be returned to District Court.

SEC. 201. When a magistrate has discharged a defendant, or held him to answer, he must return to the next district court of the county at or before its opening, on the first day of the term, the warrant and statement if any, and the deposition and all undertakings of bail for the appearance of defendant and witnesses taken by him.

 CHAPTER XXI.

POWERS AND DUTY OF GRAND JURY.

Power and Duty of Grand Jury.

SEC. 202. The grand jury has power, and it is made its duty, to inquire into all indictable offences committed, or which may be

tried within the county, and present them to the court by indictment.

SEC. 203. Upon such inquiry, it may where the defendant has been held to answer for a public offence, find an indictment upon the testimony taken before a magistrate.

SEC. 204. In all other cases, the indictment must be found upon such evidence as is given by witnesses produced and sworn before them, or furnished by legal documentary proof.

Grand Jury not bound to hear evidence for defendant.

SEC. 205. The grand jury is not bound to hear evidence for the defendant; but it is its duty to weigh all the evidence submitted to it, and when it has reason to believe that other evidence within its reach will explain away the charge, it may order such evidence to be produced.

Grand jury to take cognizance of offenses within their knowledge.

SEC. 206. If a member of the grand jury knows, or has reason to believe that a public offence has been committed, triable in the county, he must declare the same to his fellow jurors and be sworn as a witness upon the investigation before them.

Special duties of grand juries.

SEC. 207. It is made the special duty of the grand jury to inquire:

First: Into the case of every person imprisoned in the jail of the county on a criminal charge and not indicted.

Second: Into the condition and management of the public prisons within the county.

Third: Into the wilful and corrupt misconduct in office of all county officers.

Fourth: Into the obstructions of roads and highways.

Clerk of court to issue subpoenas.

SEC. 208. The clerk of the court must whenever required by the forman of the grand jury or prosecuting attorney, issue subpoenas for witnesses to appear before the grand jury.

Jury entitled to access to prisons.

SEC. 209. The jury is entitled to free access at all reasonable times to the county jails and to the examination without charge of all public records within the county.

Prosecuting attorney to attend upon the grand jury.

SEC. 210. Whenever required by the grand jury, it is the duty of the prosecuting attorney to attend before it for the purpose of obtaining witnesses and of giving legal advice.

Prosecuting attorney not to be present when indictment is found.

SEC. 211. Such attorney shall be allowed at all times to appear before the grand jury on his own request, for the purpose of giving information relative to any matter cognizable by it; but no

such attorney nor any other officer or person except the grand jury must be present when the question is taken upon the finding of an indictment.

Proceedings and testimony before Grand Jury to be kept secret.

SEC. 212. Every member of the grand jury must keep secret the proceedings of that body, and the testimony given before them, except as hereinafter required. Nor shall any grand juror or officer of the court disclose the fact that an indictment for a felony has been found against any person not in custody or under bail, otherwise than by presenting the same in court, or issuing or executing process thereon, until such person has been arrested. A violation of this section is a misdemeanor.

Testimony can only be disclosed to impeach a witness on the trial.

SEC. 213. A member of the grand jury may be required by the court to disclose the testimony of a witness examined before them, for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before them by any witness upon a charge against him for perjury.

Grand Jury not to be questioned for action in jury room.

SEC. 214. No grand jury shall be questioned for any thing he may say, or any vote he may give in the grand jury relative to a matter legally pending before them, except for perjury of which he may have been guilty in making an accusation, or in giving testimony to his fellow jurors.

CHAPTER XXII.

FINDING AND PRESENTMENT OF INDICTMENTS.

An indictment must have the concurrence of twelve Grand Jurors, and indorsed by the foreman.

SEC. 215. An indictment cannot be found without the concurrence of twelve grand jurors, and when so found, it must be endorsed "A true bill;" and the indorsement must be signed by the foreman of the grand jury.

SEC. 216. If twelve grand jurors do not concur in finding an indictment, the testimony and statement taken before the magistrate must be returned to the court, with an indorsement thereon, signed by the foreman to the effect that the charge is dismissed.

SEC. 217. Such dismissal shall not prevent the same charge from being again submitted to the grand jury as often as the court may direct.

SEC. 218. When an indictment is found by the grand jury and indorsed as prescribed by this chapter, it must be presented by their foreman in their presence, to the court and filed by the clerk.

CHAPTER XXIII.

FORMS AND REQUISITES OF INDICTMENTS.

What constitutes an indictment.

SEC. 219. An indictment is an averment in writing, made by a grand jury, legally convoked and sworn, that a person therein named or described, has done some act or been guilty of some omission which by law is a public offence.

Indictment not to be quashed if either of the points described in this section can be established.

SEC. 220. No indictment shall be quashed or judgment thereon arrested or deemed invalid if it can be understood:

First: That the same was presented to some court having jurisdiction of the offence, charged in the indictment, although the name of the court may not be accurately set forth.

Second: That it was found by a grand jury of the county in which the court was held.

Third: That the defendant is named, or if his name cannot be discovered, that he be described by a fictitious name, with the statement that his real name is unknown.

Fourth: That the offence was committed at some place within the jurisdiction of the court, except where it is otherwise provided that the act when done without the local jurisdiction of the county is triable therein.

Fifth: That the offence was committed at some time prior to the time of finding the indictment.

Sixth: That the acts or omissions charged, be so clearly and distinctly set forth as to enable the accused to plead the judgment on such indictment in bar of any future prosecution for the same offence.

Seventh: That where material, the name of the person injured, be set forth when known by the grand jury, and if not known, that it may be so stated in the indictment.

Eighth: That the indictment be indorsed by the foreman "A true bill," and marked and filed by the clerk.

Indictment must present only one offence.

SEC. 221. An indictment must present but one public offence, but such offence may be therein charged in different forms to meet the evidence in the case.

Defendant can be convicted on degree lower than that charged in the indictment.

SEC. 222. On an indictment for a public offence admitting of different degrees, the defendant may be convicted of such offence on any degree lower than that charged in form in such indictment.

Indictment need not be confined to words of statute.

SEC. 223. Words used in a statute to define a public offence, need not be strictly pursued in the indictment, but other words conveying the same meaning may be used.

Form not material.

SEC. 224. No indictment is insufficient nor shall the trial judgment or other proceeding thereon be affected by reason of any defect or imperfection in matter of form, which do not turn to the prejudice of the defendant.

Presumptions of law not be stated.

SEC. 225. Neither presumptions of law, nor matter of which judicial notice is taken, need be stated in an indictment.

Facts conferring jurisdiction not to be stated in indictment.

SEC. 226. In pleading a judgment or other determination of, or proceeding before a court or officer of special jurisdiction, the facts conferring jurisdiction need not be stated in the indictment; but it is sufficient to state that the judgment or determination was duly made, or the proceedings duly had before such court or officer; but the facts constituting the jurisdiction must be established on the trial.

SEC. 227. In pleading a private statute or right derived therefrom, it is sufficient to refer the same by its title and the day of its approval, and the court must thereupon take judicial notice thereof.

Indictment for perjury need not state in what court perjury was committed.

SEC. 228. In an indictment for perjury or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offence was committed, or in what court, or before whom the oath alleged to be false was taken, and that the court or person before whom it was taken had authority to administer the same, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record, or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed.

Of indictment for forgery.

SEC. 229. In any case where an intent to defraud is required to constitute the offence of forgery or any other offence that may be prosecuted, it shall be sufficient to allege in the indictment an intent to defraud without naming the particular person or body corporate intended to be defrauded, and on the trial of such indictment it is sufficient if there appear to be an intent to defraud the United States, or any state or Territory, county, city, or township, or any body corporate, or any public officer in his official capacity, or any copartnership or members thereof, or any particular person.

Accessories to be punished same as principals.

SEC. 230. The distinction between an accessory before the fact and a principal is abrogated, and all persons concerned in the commission of a public offence, whether they directly commit the act constituting the offence or aid or abet in its commission, though not present, must hereafter be indicted, tried and punished as principals.

Accessories after the fact.

SEC. 213. An accessory after the fact to the commission of a public offence, may be indicted, tried and punished though the principal be neither tried nor convicted.

Compounding with felony.

SEC. 232. A person may be indicted for having with the knowledge of a commission of a public offence, taken money or property of another, or a gratuity or reward, or engagement or promise therefor, upon agreement or understanding, express or implied to compound or conceal the offence, or to abstain from a prosecution thereof, or to withhold any evidence thereof, though the person guilty of the original offence has not been indicted or tried.

CHAPTER XXIV.

ARRAIGNMENT OF THE DEFENDANT.

Defendant to be arraigned.

SEC. 233. When the indictment is filed, the defendant must be arraigned thereon before the court in which the trial is to be had.

Accused to be arraigned in open court.

SEC. 234. If the indictment be for a felony or for any crime punishable by imprisonment in the penitentiary, the defendant must be personally present; but if the indictment be for a crime punishable by fine or imprisonment in the county jail, only his personal appearance is unnecessary, and he may appear upon arraignment by counsel.

Bench warrant to be issued for defendant.

SEC. 235. The clerk on the application of the prosecuting attorney, may accordingly, at any time after the order, whether the court be in session or not, issue a bench warrant into one or more counties of this Territory for the arrest of the defendant.

Bench warrant may be served by sheriff in any county.

SEC. 236. A bench warrant may be served in any county in this Territory, and directed to any sheriff, constable, marshal, or policeman thereof.

Defendant to have counsel.

SEC. 237. If the defendant appear for arraignment without

counsel, he shall be informed by the court, that it is his right to have counsel if he so desire.

Indictment must be read to defendant.

SEC. 238. The arraignment must be made by the court, or by the clerk or prosecuting attorney, under its direction; and consists in reading the indictment to the defendant and in asking him whether he plead guilty or not guilty.

SEC. 239. When the defendant is arraigned he must be informed that if the name by which he is indicted be not his true name, he must then declare the same or be proceeded against by the name in the indictment.

SEC. 240. If he give no other name, or refuse to give his true name, he is thereafter precluded from objecting to the indictment upon the ground of being therein improperly named.

The name of the accused in the indictment.

SEC. 241. If he allege that another name is his true name, the court must direct an entry thereof in the minutes of the arraignment; and the subsequent proceedings on the indictment may be had against him by that name, refering also to the name by which he was indicted.

One day or more to be given defendant to answer the indictment.

SEC. 242. If on the arraignment, the defendant require it, he may be allowed until the next day or such further time may be given him as the court may deem reasonable to answer the indictment.

SEC. 243. If the defendant require time as provided in the last section, then on the next day, or at such further day, as the court may have allowed him, he may in answer to the arraignment either move the court to set aside the indictment or may demur or plead thereto.

CHAPTER XXV.

SETTING ASIDE THE INDICTMENT.

When the indictment to be set aside.

SEC. 244. The indictment must be set aside by the court in which the defendant is arraigned, and upon his motion in either of the following cases:

First: When it is not indorsed by the foreman of the grand jury as a true bill.

Second: When it has not been marked filed by the clerk.

Third: When the names of the witnesses examined before the grand jury, or whose depositions have been read before it, are not indorsed on the indictment.

SEC. 245. If the motion to set aside the indictment be not made before demurring or pleading, the defendant is precluded from afterward taking the objections mentioned in the last section.

SEC. 346 [246.] The motion must be heard when it is made, unless for good cause the court postpone the hearing to another time.

SEC. 247. If the motion be denied, the defendant must immediately answer the indictment either by demurring or pleading thereto.

SEC. 248. If the motion be granted, the court must order the defendant, if in custody, to be discharged, or if admitted to bail, that his bail be exonerated, or if he has deposited money instead of bail, that the money deposited be refunded to him unless the court direct the case be resubmitted to the same or another grand jury.

Defendant to give bail when case is re-submitted.

SEC. 249. If the court direct that the case be re-submitted, the defendant, if already in custody, must so remain unless he be admitted to bail, or if already admitted to bail, or money has been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment.

SEC. 250. An order to set aside the indictment as provided in this chapter, shall be no bar to a future prosecution for the same offence.

CHAPTER XXVI.

DEMURRER.

SEC. 251. The only pleading on the part of the defendant is either a demurrer or plea.

When demurrer to be put in.

SEC. 252. Both the demurrer and plea must be put in in open court, either at the time of the arraignment, or at such other time as may be allowed to the defendant for that purpose.

For what cause indictment may be demurred to.

SEC. 253. The defendant may demur to the indictment when it appears upon its face either,

First: That the grand jury had no legal authority to inquire into the offence charged.

Second: That the facts as stated do not constitute a public offence.

Third: That the indictment contains any matter which if true, would constitute a legal justification or excuse for the offence charged, or other legal bar to the prosecution.

SEC. 254. The demurrer must be in writing, signed either by the defendant or his counsel, and filed with the clerk. It must

distinctly specify the ground of demurrer to the indictment or it shall be disregarded.

SEC. 255. Upon the demurrer being filed the objections thereby presented, must be heard immediately, or at such time as the court may appoint.

SEC. 256. If the demurrer be disallowed, the court shall permit the defendant, at his election, to plead, which he must do forthwith, or at such time as the court may prescribe.

Objections that appear on the face of indictment, to be taken by demurrer.

SEC. 257. Objections which appear upon the face of the indictment can be taken only by demurrer, except that objections to the jurisdiction of the court, or that the facts stated do not constitute a public offence, may be taken at the trial under the plea of not guilty and in arrest of judgment.

CHAPTER XXVII.

PLEAS TO INDICTMENT.

Three pleas to an indictment.

SEC. 258. There are three kinds of pleas to an indictment, which may be pleaded by the defendant:

First: Guilty.

Second: Not Guilty.

Third: A former judgment of conviction or acquittal of the offences charged in this indictment, and which last plea may be pleaded with or without the plea of not guilty.

Pleas must be in writing.

SEC. 259. Every plea must be in writing, signed by the defendant or his counsel and filed with the clerk.

Of the plea not guilty.

SEC. 260. Upon filing the plea of not guilty, or of a former judgment of conviction or acquittal, the parties are at issue without any other or farther pleading.

SEC. 261. The plea of not guilty is a denial of every material allegation in the indictment.

Plea of guilty may be withdrawn.

SEC. 262. The court may at any time before judgment upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted by the defendant.

Conviction upon indictment shall be a bar to another indictment for same offence.

SEC. 263. When the defendant has been convicted or acquitted upon an indictment, for an offence consisting of different degrees,

the conviction or acquittal, shall be a bar to another indictment for the offence charged in the former, or for any lower degree of that offence, or for an offence necessarily included therein.

Plea of not guilty to be entered when defendant remains silent.

SEC. 264. If the defendant remain mute or refuse to answer the indictment by demurrer or plea, a plea of not guilty must be entered by the court and the trial shall proceed as if the same had been filed by the defendant in writing.

CHAPTER XXVIII.

CHALLENGING THE JURY.

Challenges.

SEC. 265. A challenge is an objection made to the trial and is of two kinds:

First: To the panel.

Second: To an individual juror.

Challenges to be joined.

SEC. 266. When several defendants are tried together they are not allowed to sever their challenges but must join therein.

SEC. 267. A challenge to the panel can be founded only on a material departure from the forms prescribed by statute, in respect to the drawing and return of the jury.

Challenge to be taken before a juror is sworn.

SEC. 268. A challenge to the panel must be taken before a juror is sworn, and must be in writing, specifying plainly and distinctly, the facts constituting the ground of challenge.

Challenge taken by either party.

SEC. 269. A challenge to the panel may be taken by either party, and upon the trial thereof, the officers whether judicial or ministerial, whose irregularity is complained of, as well as any other persons may be examined to prove or disprove the facts alleged as the ground of the challenge.

SEC. 270. If the facts of the challenge be allowed by the court, the jury must be discharged, so far as the trial of the indictment in question is concerned. If it be disallowed, the court shall direct the jury to be impanelled.

SEC. 271. A challenge to an individual juror, is either peremptory or for cause.

SEC. 272. It must be taken when the juror appears, and before he is sworn, but the court may for good cause, permit it to be taken after the juror is sworn and before the jury is completed.

Peremptory challenges.

SEC. 273. A peremptory challenge is an objection to a juror,

for which no reason need be given, but upon which the court may exclude him.

Number defendant may challenge; Prosecuting Attorney challenge half as many.

SEC. 274. The defendant on his trial, if indicted for a capital crime, or an offence punishable with imprisonment in the penitentiary for life, may challenge peremptorily twelve jurors, and more if indicted for any other felony; he may challenge only six in the same manner, and if for an offence less than felony only four. In such case, the prosecuting attorney has the right to challenge peremptorily one half as many as the defendant is entitled to.

SEC. 275. A challenge for a cause, may be taken either by the Territory or by the defendant.

Grounds for challenge.

SEC. 276. It is an objection to a particular juror and is either,

First: General that the juror is disqualified from serving in any case, or

Second: Particular that he is disqualified in the case on trial.

General cause of challenge.

SEC. 277. General cause of challenge are,

First: A conviction for felony.

Second: A want of any of the qualifications prescribed by statute to render a person a competent juror.

Third: Unsoundness of mind, or such defects in the faculties of the mind or the organs of the body as render him incapable of performing the duties of a juror.

Particular causes for challenge.

SEC. 278. Particular causes of challenge are of two kinds,

First: For such a bias as when the existence of the fact is ascertained in judgment of law, disqualifies the juror, and which is known in this chapter as implied bias.

Second: For the existence of a state of mind on the part of the juror, in reference to the case, which in the exercise of a sound discretion, leads to the inference that he will not act with entire impartiality and which is actual bias.

Challenges for implied bias.

SEC. 279. A challenge for implied bias, may be taken for all or any of the following causes and for no other,

First: Consanguinity or affinity within the ninth degree, to the person alleged to be injured by the offence charged, or on whose complaint the prosecution was instituted or to the defendant.

Second: Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, a member of the defendant, or of the person alleged to be injured by the offence charged, or on whose complaint the prosecution was instituted or in whose employment on wages.

Third: Being a party adverse to the defendant in a civil action, or having complained against, or been accused by him in a criminal prosecution.

Fourth: Having served on the grand jury which found the indictment, or on a coroners jury which inquired into the death of a person whose death is the subject of the indictment.

Fifth: Having served on a trial jury which has tried another defendant for the offence charged in the indictment.

Sixth: Having been one of a jury formally sworn to try the same indictment, and whose verdict was set aside, or which was discharged without a verdict after the cause was submitted to it.

Seventh: Having served as a juror in a civil action brought against the defendant for the act charged as an offence.

Eighth: Having formed or expressed an unqualified opinion or belief that the prisoner is guilty or not guilty of the offence charged.

Ninth: If the offence charged be punishable by death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he shall neither be permitted or compelled to serve as a juror.

Exemption of service on a jury.

SEC. 280. An exemption from service on a jury is not a cause of challenge; but the privilege of the person exempted.

SEC. 281. Upon the trial of a challenge to an individual juror, the juror challenged may be examined on either side, and the rules of evidence applicable to the trial of other issues shall govern the admission or exclusion of testimony on the trial of the challenge.

SEC. 282. In all challenges the court shall determine the law and the fact, and must either allow or disallow the challenge.

CHAPTER XXIX.

THE TRIAL.

SEC. 283. The jury, having been impanelled and sworn, the trial shall proceed in such order as the court may direct.

Defendants tried separately or jointly.

SEC. 284. When two or more defendants are jointly indicted for felony, and defendant requiring it, may be tried separately. In other cases, defendants jointly indicted, may be tried separately or jointly, in the discretion of the court.

One defendant may be discharged and his evidence used for his associates.

SEC. 285. When two or more persons are included in the same indictment, and the court is of the opinion that in regard to a particular defendant there is not sufficient evidence to put him on his

defence, an order may be made that he be discharged from the indictment before the evidence is closed, that he may be a witness for his co-defendants.

Effect of acquittal.

SEC. 286. The order mentioned in the last section shall be deemed an acquittal of the defendant, and shall be a bar to another prosecution for the same offence.

Trial for Conspiracy.

SEC. 287. Upon a trial for conspiracy in a case where an overt act is required by law to constitute the defence, the defendant cannot be convicted unless one or more overt acts be expressly alleged in the indictment, nor unless one or more of the acts alleged be proved; but other overt acts, not alleged in the indictment, may be given in evidence.

Proof in rape.

SEC. 288. Proof of actual penetration into the body, is sufficient to sustain an indictment for rape.

A conviction on testimony of accomplice.

SEC. 289. A conviction cannot be had upon the testimony of an accomplice, unless he be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offence, and the corroboration is not sufficient if it merely show the commission of the offence or the circumstances thereof.

Of testimony on indictment for reducing female to prostitution.

SEC. 290. Upon a trial for enticing or taking away an unmarried female of previously chaste character, for the purpose of prostitution, or aiding or assisting therein, or for seducing and debauching any unmarried woman of previous chaste character, the defendant cannot be convicted upon the testimony of the person injured unless she be corroborated by other evidence tending to connect the defendant with the commission of the offence.

When facts proved constitute a higher offence than charged in indictment, defendant to be committed.

SEC. 291. If it appear, by the testimony, that the facts proved constitute an offence of a higher nature than that charged in the indictment, the court may direct the jury to be discharged, and all proceedings on the indictment to be suspended, and may order the defendant to be committed, or continue on bail to answer any new indictment which may be found against him for the higher offence.

SEC. 292. If the indictment for the higher offence be dismissed by the grand jury, or be not found at the next term, the court must proceed to try the defendant on the original indictment.

When jury to be discharged.

SEC. 293. The court may also discharge the jury where it appears that it has not jurisdiction of the offence, or that the facts,

as charged in the indictment, do not constitute an offence punishable by law.

When defendant must be discharged.

SEC. 294. If the jury be discharged because the court has not jurisdiction of the offence charged in the indictment, and it appear that it was committed out of the jurisdiction of this Territory, the defendant must be discharged.

If offence was committed in another county, the defendant to be held to await a warrant from that county.

SEC. 295. If the offence was committed within the exclusive jurisdiction of another county of this Territory, the court must direct the defendant to be committed for such time as shall be deemed reasonable, to await a warrant from the proper county, for his arrest; or if the offence be bailable, he may be admitted to bail in a recognizance, with sufficient sureties that he will, within such time as the court may appoint, render himself amenable to a warrant for his arrest, from the proper county, and if not sooner arrested thereon, will attend, at the office of the sheriff of the county where the trial was had, at a certain time, particularly designated in the recognizance, to surrender himself upon the warrant, if issued, or that the bail will forfeit such sum as the court may fix to be mentioned in the recognizance.

Papers to be transmitted to proper county.

SEC. 296. In the case provided for in the last section, the clerk shall forthwith transmit a certified copy of the indictment and all the papers in the action, filed with him, to the prosecuting attorney of the proper county.

Defendant to be discharged when no warrant issues from proper county.

SEC. 297. If the defendant be not arrested on a warrant from the proper county, he shall be discharged from custody, or his bail in the action shall be exonerated, or money deposited instead of bail, shall be refunded, as the case may be, and the sureties in the recognizance must be discharged.

SEC. 298. If he be arrested, the same proceedings must be had thereon, as upon the arrest of a defendant in another county on a warrant of arrest issued by a magistrate.

Proceedings when facts proved do not constitute punishable offence.

SEC. 299. If the jury be discharged because the fact set forth do not constitute an offence punishable by law, the court must order that the defendant, if in custody, be discharged therefrom; or if admitted to bail, that his bail be exonerated; or if he has deposited money instead of bail, that the money be refunded, unless, in its opinion, a new indictment can be framed upon which

the defendant can be legally convicted, in which case, the court may direct that the case be submitted to the same, or another grand jury.

Jury in certain cases to view the place where offence was committed.

SEC. 300. Whenever, in the opinion of the court, it is proper that the jury should view the place in which the offence was charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted, in a body, in the custody of proper officers, to the place which shall be shown them, by a person appointed by the court for that purpose.

Proceedings when a juror is acquainted with any of the facts.

SEC. 301. If a person have any personal knowledge respecting a fact in controversy, in a cause, he must declare the same in open court, during the trial; and if, during the retirement of the jury, a juror declare any facts which could be evidence in the cause, as of his own knowledge, the jury must return into court, and the juror must be sworn as a witness, and examined in the presence of the parties.

SEC. 302. The persons sworn to try an indictment may, at any time before the submission of the cause to them, in the discretion of the court, be permitted to separate, or be kept in charge of a proper officer.

Jury not to converse about the trial.

SEC. 303. The jury shall also, at each adjournment of the court, whether they be permitted to separate, or be kept in charge of officers, be admonished by the court that it is their duty not to converse among themselves on any subject connected with the trial, or to form or express any opinion thereon, until the cause is finally submitted to them.

Juror to be discharged when sick, and a new juror sworn.

SEC. 304. If, before the conclusion of a trial, a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged, and in such case a new juror may be sworn, and the trial begin anew; or the jury may be discharged and a new jury then, or afterward, be impanelled.

One or more defendants may be convicted.

SEC. 305. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

Questions of law to be decided by the court; Questions of fact determined by the jury.

SEC. 306. On the trial of an indictment for any offence, questions of law are to be decided by the court, saving the right of the defendant and the Territory to except. Questions of fact are to be tried by the jury; and although the jury have the power to find

a general verdict, which includes questions of law, as well as fact, they are bound, nevertheless, to receive as law what is laid down as such by the court.

The court to charge jury on the law.

SEC. 307. In charging the jury, the court shall state to them all such matters of law as it may think necessary, for their information in giving their verdict.

Charge reduced to writing when demanded.

SEC. 308. The charge of the court to the jury must be reduced to writing, signed and filed with the clerk when required by either party.

Jury to be kept without meat or drink until they agree.

SEC. 309. After hearing the charge, the jury may either decide in court or retire for deliberation. If they do not agree without retiring, one or more officers must be sworn to keep them together in some private and convenient place, without meat or drink, unless otherwise ordered by the court, and not to permit any person to speak to them, nor to speak to them themselves, unless it be to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed.

Commitment of defendant.

SEC. 310. When a defendant having given bail appears for trial, the court may in its discretion at any time after his appearance for trial, order him to be committed to the custody of the proper officer, to abide the judgment or further order of the court, and he shall be committed and held in custody accordingly.

CHAPTER XXX.

VERDICT.

Names of jurors to be called.

SEC. 311. When the jury has agreed upon its verdict, it must be conducted into court by the officer having it in charge. The names of the jurors must then be called, and if all do not appear, the rest must be discharged without giving a verdict. In such case the cause may be again tried at the same or another term.

Defendant to be present at rendition of verdict; Defendant in certain cases may be absent.

SEC. 312. If the indictment be for a felony or a crime punishable by imprisonment in the penitentiary, the defendant must be present at the rendition of the verdict. If it be for a crime punishable by fine or imprisonment in the county jail, the verdict may be rendered in his absence.

Jury to be interrogated and declare their verdict.

SEC. 313. When the jury have answered to their names, the court or the clerk shall ask them whether they have agreed upon

their verdict, and if the foreman answer in the affirmative they must on being required declare the same.

Either general or special verdict may be found.

SEC. 314. The jury may either render a general verdict, or where they are in doubt as to the legal effect of the facts proven they may find a special verdict.

General verdict defined—form of general verdict.

SEC. 315. A general verdict upon a plea of not guilty, is either "guilty" or "not guilty," which imports a conviction or acquittal on every material allegation in the indictment. Upon a plea of a former conviction or acquittal of the same offence, it is either "for the Territory" or "for the defendant."

Conclusion of fact to be very plain.

SEC. 316. A special verdict is that by which the jury find the facts only, leaving the judgment to the court. It must present the conclusion of facts as established by the evidence and not the evidence to prove them, and then conclusions of facts must be so presented as that nothing remains to the court but to draw conclusions of law upon them.

Special verdict to be reduced to writing.

SEC. 317. The special verdict must be reduced to writing by the jury or in their presence, entered upon the minutes of the court, read to the jury and agreed to by them before they are discharged.

No particular form required.

SEC. 318. The special verdict need not be in any particular form, but shall be sufficient if it present intelligibly the facts found by the jury.

How judgment upon special verdict to be rendered.

SEC. 319. The court must give judgment upon the special verdict as follows:

First: If the plea be not guilty and the facts prove the defendant guilty of the offence charged in the indictment, or of any other offence of which he could not be convicted in law under that indictment, judgment shall be given accordingly. But if the facts found do not prove the defendant guilty of the offence charged, or of any offence of which he could be so convicted under the indictment, judgment of acquittal must be rendered.

Second: If the plea be a former conviction or acquittal of the same offence, the court must give judgment of conviction or acquittal as the facts prove or fail to prove the former conviction or acquittal.

Court may order jury to further deliberate.

SEC. 320. If the jury do not in a special verdict pronounce affirmatively or negatively on the facts necessary to enable the court to give judgment, or if they find the evidence of facts merely

and not the conclusions of fact from the evidence as established to their satisfaction, the court may order them to retire for further deliberation.

SEC. 321. In all other cases the defendant may be found guilty of any offence the commission of which is necessarily included in that with which he is charged in the indictment.

Jury may agree as to part of the offenders.

SEC. 322. On an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly; and the case as to the rest may be tried by another jury.

If a verdict be neither general nor special, the court may order it to be reconsidered.

SEC. 323. If the jury render a verdict which is neither a general nor special verdict, the court may direct them to reconsider it, and it shall not be recorded until it be rendered in some form from which it can be clearly understood what is the intent of the jury, whether to render a general verdict or to find the facts specially, and to leave the judgment to the court.

Defendant to be discharged even upon an informal verdict of acquittal.

SEC. 324. If the jury persist in finding an informal verdict, from which, however, it can be understood that their intention is to find for the defendant upon the issue, it shall be entered in the terms in which it is found, and the court must give judgment of acquittal. But no judgment of conviction can be given unless the jury expressly find against the defendant upon the issue, or judgment be given against him upon a special verdict.

Jury may be polled.

SEC. 325. When a verdict is rendered, and before it is recorded, the jury may be polled on the requirement of either party, in which case, they shall be severally asked whether it be their verdict, and if any one answer in the negative, the jury must be sent out for further deliberation.

Proceedings when prisoner is insane.

SEC. 326. If the defence be the insanity of the defendant, the jury must be instructed, if they acquit him on that ground, to state the fact in their verdict. The court may thereupon, if the defendant be in custody, and his discharge is deemed dangerous to the public peace or safety, order him to be committed or retained in custody until he becomes sane.

Defendant discharged when judgment is given.

SEC. 327. If judgment of acquittal be given on a general verdict, and the defendant be not detained for any other legal cause, he must be discharged as soon as the judgment is given.

CHAPTER XXXI.

BILLS OF EXCEPTIONS.

Exceptions to the indictment.

SEC. 328. On the trial of an indictment exceptions may be taken by the defendant or prosecuting attorney to a decision of the court on matter of law, in any of the following cases:

First: In disallowing a challenge to the panel of the jury or to an individual juror for a general disqualification, or for implied bias.

Second: In admitting or rejecting witnesses or testimony or in deciding any question of law not a matter of discretion, or in charging or instructing the jury upon the law on the trial of the case.

Exceptions to be signed by the judge who tried the cause.

SEC. 329. A bill of exceptions must be settled and signed by the judge who tried the cause, and filed with the clerk.

Bills of exceptions to be settled at the trial.

SEC. 330. The bill of exceptions must be settled at the trial unless the court otherwise direct. If no such direction be given, the point of exception must be particularly stated in writing and delivered to the court, and shall immediately be corrected or added to until it is made conformable to the truth.

What bills of exceptions must contain.

SEC. 331. The bill of exceptions must contain so much of the evidence only as is necessary to present the question of law upon which the exceptions were taken.

CHAPTER XXXII.

NEW TRIALS.

Definition of a new trial.

SEC. 332. A new trial is a re-examination of the issue in the same court, before another jury after a verdict has been given.

Effect of granting a new trial.

SEC. 333. The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew, and the former verdict cannot be used or referred to another in evidence or argument.

For what reason a new trial may be granted.

SEC. 334. The court may grant a new trial for the following causes or any of them:

First: When the trial has been had in the absence of the defendant, if the indictment be for felony.

Second: When the jury has received any evidence, paper or document out of court, not authorized by the court.

Third: When the jury have separated without leave of the court after retiring to deliberate upon their verdict, or have been guilty of any misconduct tending to prevent a fair and due consideration of the case.

Fourth: When the verdict has been decided by lot, or by means other than a fair expression of opinion on the part of all the jurors.

Fifth: When the court has misdirected the jury, in a material matter of law.

Sixth: When the verdict is contrary to law or evidence. But no more than two new trials shall be granted for this cause alone.

SEC. 325. The application for a new trial must be made before judgment, by the defendant.

CHAPTER XXXIII.

ARREST OF JUDGMENT.

Motion in arrest of judgment—when made and for what cause granted.

SEC. 336. A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant on a plea of a former conviction or acquittal, and may be granted by the court for either of the following causes:

First: That the grand jury who found the indictment had no legal authority to inquire into the offense charged, by reason of its not being within the jurisdiction of the court.

Second: That the facts stated do not constitute a public offence.

SEC. 337. The court may also, on its view of any of these defects, arrest the judgment without motion.

Effect of arrest of judgment.

SEC. 338. The effect of allowing a motion in arrest of judgment, is to place the defendant in the same situation in which he was before the indictment was found.

SEC. 339. If, by the evidence on the trial, a fatal variance appear between such evidence and the offence charged in the indictment, and there are reasonable grounds to believe that the defendant can be convicted of such offence, if properly charged, the court may, at any time before such cause is submitted to the jury, arrest the trial, discharge the jury, and order the defendant to be recommitted to the officer of the proper county, or admitted to bail anew to answer a new indictment.

CHAPTER XXXIV.

JUDGMENT.

Court to pronounce judgment.

SEC. 340. After a verdict of guilty, or after a verdict against the defendant on a plea of a former conviction or acquittal, if the

judgment be not arrested, or a new trial granted, the court must pronounce judgment.

Defendant must be personally present when judgment pronounced.

SEC. 341. For the purpose of judgment, if the conviction be for a felony or any crime punishable by imprisonment in the penitentiary, the defendant must be personally present; if it be for any other crime, judgment may be pronounced in his absence.

SEC. 342. When the defendant is convicted of a felony, if he be in custody, the court may direct the officer in whose custody he is to bring him before it for judgment.

If defendant be absent, bench warrant to issue.

SEC. 343. If the defendant has been discharged on bail, or has deposited money instead thereof, and do not appear for judgment when his personal attendance is necessary, the court may order the clerk to issue a bench warrant for his arrest.

SEC. 344. The clerk, on the application of the prosecuting attorney, may, accordingly, at any time after the order, whether the court be sitting or not, issue a bench warrant into one or more counties for his arrest.

Bench warrant may be served in any county.

SEC. 345. The bench warrant may be served in any county of this Territory, in the same manner as a warrant of arrest.

SEC. 346. Whether the bench warrant be served in the county where it was issued or in another county, the officer must arrest the defendant and bring him before the court, or commit him to the officer mentioned in the warrant, according to the command thereof.

Defendant to be asked if he have any thing to say.

SEC. 347. When the defendant appears for judgment, he shall be informed by the court, or by the clerk, under its direction, of the nature of the indictment, and of his plea and the verdict, if any thereon, and must be asked whether he have any legal cause to show why judgment should not be pronounced against him.

SEC. 348. If no sufficient cause be alleged, or appear to the court, why judgment should not be pronounced, it shall thereupon be rendered.

Of circumstances which aggravate extent of punishment.

SEC. 349. After a plea or verdict of guilty in any case where a discretion is conferred upon the court as to the extent of the punishment, the following are to be considered by the court as circumstances of aggravation, in pronouncing the sentence upon the defendant:

First: If the person committing the offence was, by the duties of his office, or by his condition, obliged to present the particular offence committed, or to bring offenders committing it to justice.

Second: If he hold any other public office, although not one requiring the suppression of the particular offence.

Third: Although holding no office, if his education, fortune, profession or reputation placed him in a situation in which his example would probably influence the conduct of others.

Fourth: When the offence was committed with premeditation, in consequence of a plan formed with others.

Fifth: When the defendant attempted to induce others to join in committing the offence.

Sixth: When the condition of the offender created a trust which was broken by the offence, or when it afforded him easier means of committing the offence.

Seventh: When, in the commission of the offence, any other injury was offered than that necessarily suffered by the offence itself, such as wanton cruelty or humiliating language in case of personal injury.

Eighth: When the offence was attended with a breach of any other moral duty than that necessarily broken in committing it, such as personal injury accompanied by ingratitude.

Ninth: When the injury was offered to one whose age, sex or infirmity rendered him incapable of resistance.

Tenth: When the injury was offered to one whose age, sex, office, conduct or condition entitled him to respect from the offender.

Eleventh: When the general character of the defendant is marked by those passions or vices which generally lead to the commission of the offence of which he has been convicted.

Circumstances in alleviation of punishment.

SEC. 350. The following circumstances are to be considered in alleviation of the punishment:

First: The minority of the offender, if so young as to justify a supposition that he was ignorant of the law, or that he acted under the influence of another.

Second: If the offender was so old as to render it probable that the faculties of his mind were weakened.

Third: The order of a superior officer is no justification for committing a public offence; but under circumstances of misapprehension of the duty of obedience, may be shown in extenuation of the offence.

Fourth: Those conditions which suppose the party to have been influenced in committing the offence by another standing in a correlative superior situation to him.

Fifth: When the offence has been caused by great provocation or other cause sufficient to excite in men of ordinary tempers such passions as require unusual strength of mind to restrain.

Defendant to have opportunity to cross examine witnesses.

SEC. 351. All matters in aggravation which form no part of the

charge in the act of accusation, and matters of extenuation which do not amount to a legal defence, and which have not necessarily or incidentally appeared to the court on the trial, may be produced either by the examination of witnesses in open court, or by their affidavits, as the court may deem most conducive to justice in each particular case; but the opposite party must in all cases have an opportunity of cross-examining the witnesses, if he require it, and of producing counter proof.

When person convicted of two or more offences.

SEC. 352. If the defendant has been convicted of two or more offences, before judgment on either, the judgment may be, that the imprisonment upon any one may commence at the expiration of the imprisonment upon any other of the offences.

SEC. 353. A judgment that the defendant pay a fine, may also direct that he be imprisoned until the fine and costs be satisfied.

Judgment to be entered on docket, and is a lien on property of defendant.

SEC. 354. When judgment is rendered, the clerk must enter the same upon the record of the court, and if such judgment, or any part thereof, be for a fine, or a fine and costs, it is a lien upon all the property of the defendant, and which lien hereby created on the property of every such offender, shall date from the time of his arrest, if arrested before indictment; if not, then from the time of finding the indictment so far as will be sufficient to pay the fine and costs.

In the absence of a penitentiary, convict may be confined with ball and chain.

SEC. 355. A crime or misdemeanor, which the foregoing sections of this criminal code has made punishable by imprisonment in the penitentiary, shall in the absence of a penitentiary, be made confinement with a "ball and chain" firmly fastened to the ankle of the convict, who may be set and kept at work at hard labor under the order of the court, or any other confinement the court may order, or such convict may in the discretion of the jury be punished by public whipping with a raw hide, upon the bare back, not exceeding fifty lashes, and shall have a judgment of banishment from the Territory rendered against him, within a time prescribed by the court.

Person returning before term of imprisonment expires, be again arrested.

SEC. 356. If any person who has had a judgment of banishment rendered against him, shall be found within the limits of the Territory at any time after the day set by the court, he shall be, for every day he is so found within the limits of the Territory,

When there is no county jail, offender may be whipped.

SEC. 358. The jury called to try any of the criminal cases wherein the punishments of the two proceeding sections are to be inflicted, shall, if they find a verdict of guilty, also make a return with their verdict, that the punishment shall be confinement under the order of the court, or public whipping to the extent of their verdict.

THE EXECUTION.

To the Sheriff of
Jefferson Territory.

County,

(Signed) N. B., Clerk of the D. C.

Order of imprisonment.

To the Keeper of the County Jail of _____ County in
the Territory of Jefferson, (or the Penitentiary, as the case
may be.)

You are hereby commanded to receive and safely keep in your custody, A. B. according to the conditions of the foregoing judgment.

Witness my hand, under the authority of the Territory of Jefferson this day of A. D. 18 .

(Signed) B. C. Clerk of the District Court.

Sheriff may call on citizens to assist in securing prisoner.

SEC. 361. The sheriff or his deputy while conveying the defendant to the proper prison, has the same authority to require the assistance of any citizen of the state in securing the defendant, and in retaking him if he escape, as if the sheriff were in his own county, and every person who neglects or refuses to assist the sheriff when so required, shall be punishable as if the sheriff were in his own county.

Judgment of death shall not be executed within thirty days.

SEC. 361. When judgment of death is rendered, the judge of the court shall sign and deliver to the sheriff of the county a warrant stating the conviction and judgment, and appointing a time, on which the judgment shall be executed which shall not be less than thirty days from the time of judgment.

Proceedings when judgment of death has not been executed.

SEC. 362. If for any reason a judgment of death has not been executed, and the same remains in force, the district court, on the application of the prosecuting attorney of the county where the conviction was had, must order the defendant to be brought before it, or if he be at large a warrant for his apprehension may be issued by that court.

The court to fix the time and place of execution.

SEC. 363. Upon the defendant being brought before the court, it shall inquire into the facts, and if no legal objection exist must make an order that the sheriff execute the judgment, and may fix the time and place of execution.

Death inflicted by hanging.

SEC. 364. The punishment of death must be inflicted by hanging the defendant by the neck until he is dead.

Court to direct whether execution be public or private.

SEC. 365. The court in issuing its warrant for the execution of the sentence of death against a defendant, must direct in such warrant whether the execution be public or private.

Who may be present at private execution.

SEC. 366. If private the sheriff must notify the judge of the county court, clerk of the district court and prosecuting attorney, together with two physicians and twelve respectable citizens to be present as witnesses of such execution. And the sheriff at the request of the defendant, may permit any minister of the gospel whom the defendant shall name, and any of his relatives to attend

the execution, and also such magistrates, peace officers and guards as the sheriff shall deem proper. But no other person than those mentioned in this section must be present at the execution.

SEC. 367. If the sheriff, from sickness or otherwise, is unable to act, the warrant mentioned in the preceeding section, must be executed by his deputy.

Sheriff's return on death warrant.

SEC. 368. Whenever a sheriff inflicts a punishment of death upon a defendant in obedience to warrant, he must make return thereof under his hand with his doing thereon, to the clerk of the court from whence it issued, and the clerk shall place the same on file with the indictment and subjoin to the record of the sentence a brief abstract of the sheriff's return on the warrant.

Execution for fines and costs.

SEC. 369. Executions may be issued by the clerk of the court, for collection of fine and costs and be executed and returned in the same manner as in civil cases.

CHAPTER XXXVI.

WRITS OF ERROR WHEN ALLOWED AND HOW TAKEN.

SEC. 370. The only mode of reviewing a judgment or order in a criminal action, is by a writ of error as prescribed in this chapter.

Writs of error may be taken within one year after judgment.

SEC. 371. Such writ of error may be sued out by the defendant at any time within one year after the rendition of judgment but not afterwards. Notice of the suing out thereof, must, within five days thereafter, be given to the prosecuting attorney of the proper county, except in capital cases.

No writ of error until after final judgment.

SEC. 372. No writ of error can be sued out in a criminal action, until a final judgment has been rendered, nor in a capital case, except upon the allowance of a judge of the supreme court, and after ten days notice to the prosecuting attorney of the time and place of making the application.

Effect of writ of error.

SEC. 373. In cases not capital, writs of errors shall issue as a matter of course, but cannot operate to stay proceedings on the execution of the judgment, unless allowed in the manner provided in the preceeding section.

How application for writ of error to be made.

SEC. 374. Application for such allowance, must in all cases, be formed upon a transcript of the indictment and bill of exceptions, or other record upon which error is alleged under the certificate of the clerk and seal of the court where the trial was had.

One or more defendants may bring writ of error.

SEC. 375. When several defendants are tried jointly, any one or more of them, may bring a writ of error. But those of their co-defendants, who do not join in suing out such writ, shall derive no benefit therefrom.

When stay of proceedings are ordered.

SEC. 376. When a stay of proceedings shall be ordered, as provided in this chapter, the judge may at the same time make such order as the case may require for the custody of the defendant, or for letting him to bail.

Stay of proceedings.

SEC. 377. If a stay of proceedings be allowed by the judge, the sheriff upon being served with the certificate thereof, must cease all further proceedings in executing the sentence; but must retain the defendant in custody or bail him in accordance with the order of the judge to him directed.

Writ of error to be directed to the clerk of the court.

SEC. 378. The writ of error authorized by this chapter, shall be directed to the clerk of the court where the trial was had, and thereupon without delay, he must make out a full and complete transcript of the proceedings in the cause and return them with the clerk to the supreme court of the proper district.

CHAPTER XXXVII.

JUDGMENT UPON WRIT OF ERROR.

Judgment of supreme court on writ of error.

SEC. 379. The supreme court must give judgment without regard to technical errors or defects which do not effect the substantial rights of the party.

Supreme court may reverse decision of court below.

SEC. 380. The supreme court may reverse, affirm or modify the judgment of the district court, and may, if necessary or proper, order a new trial.

Proceedings when judgment reversed.

SEC. 381. If judgment be reversed without ordering a new trial, the supreme court shall direct, if the defendant be in custody, that he be discharged; or if he be admitted to bail, that his bail be exonerated; or, if money be deposited instead of bail, that it be refunded to him.

Effect of judgment of affirmance.

SEC. 382. On a judgment of affirmance against the defendant, the original judgment shall be carried into execution as the supreme court shall direct.

Judgment of supreme court to be remitted to clerk of District court.

SEC. 383. When the judgment of the supreme court is rendered, it must be entered on the judgment book, and a certified copy of the entry must be forthwith remitted to the clerk where the original judgment was rendered.

SEC. 384. After the certificate of the judgment has been remitted, as provided in the preceding section, the supreme court has no further jurisdiction of the proceedings thereon, and all orders which may be necessary to carry the judgment into effect, must be made by the court to which the certificate is remitted.

CHAPTER XXXVIII.

IMPEACHMENTS.

Who may be impeached.

SEC. 385. Any civil officer of this Territory, except county or township officers, may be impeached for corruption or other misconduct in office, as well as for high crime and misdemeanors.

House of Representatives to act in case of impeachment.

SEC. 386. A majority of all the members of the House of Representatives elected, must concur in an impeachment.

Accused allowed counsel.

SEC. 387. The impeachment must specify the offences charged with the same precision as is requisite in an indictment, and the accused must be allowed counsel, as in cases of either prosecutions.

SEC. 388. When possessed of an impeachment, the Senate or Council must forthwith cause the person accused to be brought before it.

Senate proceedings in cases of impeachment.

SEC. 389. All writs and process must be issued by the Secretary of the Senate or Council, and tested in his name, and may be served by any person thereto authorized by the Senate or Council or its President.

Accused to have copy of impeachment.

SEC. 390. Upon the appearance of the person impeached, he is entitled to a copy of the impeachment, and to a reasonable time in which to answer the same.

Members to take oath similar to jury.

SEC. 391. Before proceeding to the trial, an oath, truly and impartially to try and determine the charge in question according to the evidence, shall be administered by the Secretary of the Senate or Council to the President, and by him to each of the members of that body.

Two thirds necessary in impeachment.

SEC. 392. The person impeached shall be declared acquitted unless two thirds of the members present assent to his conviction.

Removal from office to follow conviction.

SEC. 393. Upon conviction the judgment shall be removed from office. It may also attach a disqualification to hold any office of honor, trust or profit, under the laws of this Territory.

Accused suspended.

SEC. 394. Every officer impeached, shall be suspended from the exercise of his official duties until his acquittal.

Person impeached liable to a public prosecution.

SEC. 394. Conviction on an impeachment does not exempt the offender from a private action or a public prosecution for the same act or offence.

Impeachment of President of Council.

SEC. 395. If the president of the council be impeached notice thereof must immediately be given to the council, which shall thereupon choose another president, to hold his office until the result of the trial is determined.

CHAPTER XXXIX.

COMPELLING THE ATTENDING OF WITNESSES.

Effect of subpoena.

SEC. 396. A magistrate before whom an information is laid, may issue subpoenas subscribed by him, for witnesses within the Territory, on behalf of either the Territory or the defendant.

Prosecuting attorney to issue subpoenas for witnesses.

SEC. 397. The prosecuting attorney may issue subpoenas subscribed by him, for witnesses within the county, in support of the prosecution, or for such other witnesses as the grand jury may direct to appear before the grand jury upon any investigation pending before them.

Clerk of court to issue subpoenas for defendant's witnesses.

SEC. 398. The clerk of the court at which an indictment is to be tried, must at all times upon the application of the defendant and without charge, issue as many blank subpoenas under the seal of the court and subscribed by him as clerk, for witnesses within the Territory as may be required by the defendant. He must also issue subpoenas on the part of the Territory when required.

Subpoena can be served by any person.

SEC. 399. A peace officer must serve within his town or county, as the case may be, any subpoena delivered to him for service on the part of either the Territory or defendant, and must make a written return of the service without delay. A subpoena may however be served by any other person.

Subpœna served by copy.

SEC. 400. The service of a subpœna must be by delivering a copy and showing the original to the witness personally.

Court to endorse on subpœna order for attendance of witness.

SEC. 401. No person is obliged to attend as a witness before any court or magistrate out of the county where he resides or is served with the subpœna, unless a judge of the supreme, district or county court, upon an affidavit of the prosecuting attorney, or of the defendant or his attorney, stating that he believes that the evidence of the witness is material and his attendance at the examination or trial necessary, shall endorse on the subpœna an order for the attendance of the witness.

Refusal to be sworn.

SEC. 402. Disobedience to a subpœna or a refusal to be sworn, or to answer as a witness, may be punished by the court or magistrate as a contempt.

SEC. 403. A witness wilfully disobeying a subpœna issued on the part of the Territory or defendant without good cause, shall also forfeit the sum of fifty dollars to the party injured, which may be recovered in a civil action.

Witness concealing himself.

SEC. 404. If a witness conceal himself to avoid the service of a subpœna, the officer may break open doors, or windows for the purpose of making service.

CHAPTER XL.

EXAMINATION OF WITNESSES CONDITIONALLY.

Defendant may have witnesses.

SEC. 405. When a defendant has been held to bail to answer a charge for a public offence, he may, either before or after indictment, have witnesses examined conditionally on his behalf as prescribed in this chapter and not otherwise.

When a witness is sick, or about to leave the territory.

SEC. 406. When a material witness for the defendant is about to leave the Territory, or is so sick or infirm as to afford reasonable ground for apprehending that he will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally.

How application must be made.

SEC. 407. The application must be made upon affidavit showing:

First: The nature of the offence.

Second: The state of the proceedings in the action.

Third: The name and residence of the witness, and that his testimony is material to the defence of the action, and

Fourth: That the witness is about to leave the Territory, or is so sick or infirm as to afford reasonable ground for believing that he will be unable to attend the trial.

SEC. 408. The application if made during the term must be made to the court.

If not made during term.

SEC. 409. If not made during the term, the application may be made as follows:

First: When the indictment or proceedings are pending in the district court, to a Judge of the district, supreme or county court.

Second: When the proceedings are pending before a Justice of the Peace for the trial of a misdemeanor, to the Justice.

Witness may be examined conditionally.

SEC. 410. If the court or officer to whom the application is made be satisfied that the examination of the witness is necessary to the attainment of justice, an order may be made that the witness be examined conditionally, at a specified time and place, and that a copy of the order and of the affidavit on which it was granted be served on the prosecuting attorney, within a specified time, before that fixed for the examination, who shall appeal and examine such witness; and in case of his failure to do so, the person before whom the examination shall take place shall appoint an attorney for that purpose.

Examination before qualified person.

SEC. 411. The examination shall take place before the Judge or Justice, or if the Judge or Justice be unable to attend, they shall appoint some qualified person to hold such examination.

Testimony reduced to writing.

SEC. 412. The testimony of the witness must be reduced to writing, and sworn to and subscribed by him, and be authenticated and certified to the clerk of the court, or magistrate where the action is pending, which deposition may be read in evidence.

SEC. 413. Nothing in this chapter shall prevent the requirement of the attendance of such witness at the trial, if he has not departed, or has become able to attend.

CHAPTER XLI.

IN WHAT CASES THE DEFENDANT MAY BE ADMITTED TO BAIL.

Admission to bail.

SEC. 414. Admission to bail is the order of a competent court or magistrate, that the defendant be discharged from actual custody upon the taking of bail.

Effect of bail.

SEC. 415. The taking of bail consists in the acceptance, by a competent court or magistrate, of the undertaking of sufficient

bail for the appearance of the defendant according to the terms of the recognizance, or that the bail will pay to the Territory a specified sum.

When offences are not bailable.

SEC. 416. The defendant cannot be admitted to bail, when he is charged,

First: With an offence punishable with death.

Second: With the infliction of a personal injury upon another, likely to produce death, and under such circumstances as that, if death ensue, the offence would be murder.

Bailable offences.

SEC. 417. If the charge be for any other offence, he may be admitted to bail before conviction, as follows:

First: As a matter of right in cases of misdemeanor.

Second: As a matter of discretion in all other cases.

Of bail after conviction.

SEC. 418. After conviction of an offence not punishable with death, a defendant, who has sued out a writ of error to take his case from the district to the supreme court of the Territory, and where there is a stay of proceedings; but not otherwise may be admitted to bail.

Before conviction defendant may be admitted to bail.

SEC. 419. Before conviction, a defendant may be admitted to bail:

First: For his appearance before a magistrate on the examination of the charge, before being held to answer.

Second: To appear to the court to which the magistrate is required to return the depositions and statement upon the defendant being held to answer after examination.

Third: After indictment, either upon the bench warrant issued from his arrest, or upon an order of the court committing him or enlarging the amount of bail, or upon his being surrendered by his bail to answer the indictment in the court in which it is found or to which it may be sent or removed for trial.

Upon stay of execution defendant may be admitted to bail.

SEC. 420. After conviction and upon a writ of error, when there is a stay of execution, the defendant may be admitted to bail as follows:

First: If the writ of error be from a judgment imposing a fine, only on the recognizance of bail only, that he will pay the same or such part of it as the supreme court may direct, if the judgment be affirmed or modified, or the writ of error be dismissed.

Second: If the judgment of imprisonment has been given, that he will surrender himself in execution of the judgment, upon its being affirmed or modified, or upon the writ of error being dismissed.

CHAPTER XLII.

DEPOSIT OF MONEY INSTEAD OF BAIL.

Defendant may deposit money.

SEC. 421. The defendant at any time after an order admitting him to bail, instead of giving bail, may deposit with the clerk of the district court, in which he is held to answer, the sum mentioned in the order, and upon delivering to the officer in whose custody he is a certificate of the deposit, he shall be discharged from custody.

Defendant may deposit money in lieu of bail.

SEC. 422. If the defendant have given bail, he may at any time before the forfeiture of the recognizance, in like manner deposit the sum mentioned in the recognizance and upon the deposit being made, the bail shall be exonerated.

Money deposited may be applied to the payment of costs.

SEC. 423. Where money has been deposited, if it remain on deposit at the time of a judgment for the payment of a fine and costs, the clerk shall under the direction of the court, apply the money in satisfaction thereof, and after paying the fine and costs, shall refund the surplus, if any, to the defendant.

CHAPTER XLIII.

FORFEITURE OF THE RECOGNIZANCE OF BAIL, OR OF THE DEPOSIT OF MONEY.

Default.

SEC. 424. If the defendant do not appear for arraignment or trial or judgment, or upon any other occasion when his person in court is lawfully required, or surrender himself in execution of judgment, the court shall enter his default.

Sacre [scire] facias to issue in cases of default.

SEC. 425. On such default the prosecuting attorney must sue out a scire facias to be served on the bail, or in case of a money deposit, on the defendant, which shall be sued as other civil process, requiring such bail or defendant, as the case may be, to show cause at the next term of the court, why such recognizance shall not be estreated or money be forfeited.

Default and sacre [scire] facias to be set aside on good cause.

SEC. 426. If such bail or defendant, as the case may be, appear in pursuance of such scire facias and show good cause in excuse for such default, the court may set aside the same on the payment of the costs of the default and scire facias.

Judgment against bail in cases of default.

SEC. 427. If such bail or defendant do not appear, or do not show good cause in excuse of such default, the court shall there-

upon order the undertaking or money to be forfeited, and in case of recognizance by bail, must enter judgment for the amount thereof, and costs against such bail.

CHAPTER XLIV.

PARDONS AND COMMUTATIONS OF FINES AND PUNISHMENTS.

Governor may grant pardons.

SEC. 428. In all cases in which the governor is authorised by the constitution to grant pardons, he may grant them upon such conditions, and with such restrictions and limitations as he may think proper and may issue his warrant to all proper officers to carry into effect such conditional pardon.

Proceedings in cases of pardon or commutation of punishment.

SEC. 429. Whenever any convict is pardoned by the governor, or his punishment is commuted, the officer to whom the warrant is directed after executing the same, must make return thereof, with his doings thereon, to the secretary of the Territory, as soon as may be, and such officer must also file in the clerk's office of the court in which the offender was committed, a certified copy of the warrant and return a brief abstract of which the clerk shall subjoin to the record of conviction.

Remission of fine.

SEC. 430. Fines imposed as a punishment for a public offence, can be remitted only by the governor of the Territory; those for contempt may be remitted by the court by which they were imposed.

Reprieves.

SEC. 431. In capital cases the governor may for good cause shown, grant a reprieve to any convict for a term not exceeding one year from the rendition of the judgment.

Authorized agent to demand fugitive.

SEC. 432. The governor of this Territory may in any case authorized by the constitution and laws of the United States, appoint agents to demand of the executive authority of any other state or territory, or from the executive authority of any foreign government, any fugitive from justice charged with treason or felony.

Offenders to be given up on requisition from other State or Territory.

SEC. 433. If any person be found in this Territory, charged with any crime committed in any other state or territory, and liable by the constitution and laws of the United States, to be delivered over upon the demand of the governor thereof, any magistrate may upon complaint on oath, issue a warrant to arrest such person, and cause him to be delivered to the acting governor, who shall deliver him to any officer or agent of such other state or territory.

CHAPTER XLV.

SEARCH WARRANT AND THE PROCEEDINGS THEREON.

For what cause a search warrant may issue—its powers.

SEC. 434. A search warrant may be issued upon the following grounds: When the property was stolen or embezzled, or in any manner concealed so as to prevent the owner from exercising his right thereto, it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled or of any other person in whose possession it may be.

Person, property, and place to be searched must be described.

SEC. 435. No search warrant can be issued but upon probable cause, supported by affidavit, naming and describing the person, and particularly describing the property and the place to be searched.

Complainant and witness to be examined on oath.

SEC. 436. The magistrate must, before issuing the warrant, examine on oath the complainant and any witness he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

SEC. 437. The depositions must set forth the facts tending to establish the grounds of the application, or that there is probable cause to believe their existence.

Magistrate must issue search warrant when convinced that there is probable cause.

SEC. 438. If the magistrate be thereupon satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, he shall issue a search warrant, signed by him with his name of office, to peace officer in his county, commanding him forthwith to search the person or place named for the property specified, and bring it before him.

Warrant directed to officer.

SEC. 439. A search warrant may in all cases be served by any of the officers mentioned in its direction; but by no other person, except in aid of the officer on his requisition, he being present and acting in its execution.

Officer may break open door or window of house.

SEC. 440. The officer may break open any outer or inner door or window of a house, or any part of the house, or any thing therein, to execute the warrant, if, after notice of his authority and purpose, he be refused admittance.

Warrant to be executed within ten days.

SEC. 441. A search warrant must be executed and returned to the magistrate by whom it was issued within ten days after its date. After the expiration of such time the warrant, unless executed, is void.

Officer must give a receipt for property taken.

SEC. 442. When the officer takes any property under the warrant, he must give a receipt for the property taken (specifying it in detail) to the person from whom it was taken or in whose possession it was found, or in the absence of the person, he must leave it in the place where he found the property.

Warrant and inventory of property taken must be returned to the magistrate; Form of return.

SEC. 443. The officer must forthwith return the warrant to the magistrate, and at the same time deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant if they be present, verified by the affidavit of the officer at the foot of the inventory, and taken before the magistrate to the following effect:

"I, the officer by whom the annexed warrant, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

Inventory given to both claimants.

SEC. 444. The magistrate, if required, must deliver an inventory to the person from whose possession the property was taken, and to the applicant for the warrant.

When warrant is controverted.

SEC. 445. If the grounds on which the warrant was issued be controverted, the magistrate must proceed to take testimony in relation thereto.

Testimony reduced to writing.

SEC. 446. The testimony given by each witness must be reduced to writing and authenticated by the magistrate.

When property to be restored.

SEC. 447. If it appear that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the ground on which the warrant was issued, the magistrate shall cause it to be restored to the person from whom it was taken.

When property was stolen or embezzled.

SEC. 448. If the property taken by virtue of a search warrant was stolen or embezzled, it must be restored to the complainant upon his making satisfactory proof to the magistrate of his ownership thereof, or his right of possession thereto.

Proceedings returned to District Court.

SEC. 449. The magistrate must annex the depositions to the complaint, together with the return and inventory, and return them to the next district court of the county, at, or before its opening, on the first day of the term.

Procuring search warrant without cause.

SEC. 450. Whoever, maliciously and without probable cause, procures a search warrant to be issued and executed, is guilty of a misdemeanor.

Person charged with felony may be searched.

SEC. 451. When a person charged with a felony is supposed by the magistrate before whom he is brought to have upon his person a dangerous weapon, or anything which may be used as evidence of the commission of the offence, the magistrate may direct him to be searched in his presence, and the weapon or other thing to be retained, subject to his order or the order of the court in which the defendant may be tried, and may order the officer, either verbally or by warrant, to search the premises of such person, or any other person who is suspected of having such weapon.

CHAPTER XLVI.

HABEAS CORPUS.

What a petition for writ of Habeas Corpus must state.

SEC. 452. The petition for the writ of habeas corpus must be sworn to, and must state:

First: That the person in whose behalf it is sought is restrained of his liberty, and the person by whom, and the place where, he is restrained, mentioning the names of his parties, if known, and if unknown, describing them with as much particularity as possible.

Second: The cause or pretence of such restraint, according to the best information of the application, and if it be by virtue of any legal process, a copy thereof must be annexed, or a satisfactory reason given for its absence.

Third: It must state that the restraint is illegal, and wherein.

Fourth: That the legality of the imprisonment has not already been adjudged upon a prior proceeding of the same character, to the best knowledge and belief of the applicant.

Fifth: It must also state whether application for the writ has been before made to, and refused by, any court or judge, and if such application has been made, a copy of the petition in that case, with the reasons of the refusal appended thereto must be produced, or satisfactory reasons given for the failure to do so.

Petition must be sworn to.

SEC. 453. This petition must be sworn to by the person confined, or by some one, in his behalf, and presented to some court or officer authorized to allow the writ.

By whom habeas corpus granted.

SEC. 454. The writ of habeas corpus may be allowed by the supreme or district court, or by any judge of either of those courts in their proper district. In such case it may be served in any part of the Territory.

When writ may be refused.

SEC. 455. If, from the showing of the petitioner, the plaintiff would not be entitled to any relief, the court or judge may refuse to allow the writ.

Form of writ of habeas corpus.

SEC. 456. But if the petition show a sufficient ground for relief, and is in accordance with the foregoing requirements the writ shall be allowed, and may be substantially as follows:

To the Territory of Jefferson:

To the Sheriff of &c.: (or to A. B., as the case may be). You are hereby commanded to have the body of C, D., by you unlawfully detained, as is alleged before the court, or before me, (or before E. F., Judge &c., as the case may be) at , on , (or immediately after being served with this writ) to be dealt with according to law, and have you then and there this writ with a return thereon of your doings in the premises.

Writ issued by clerk or judge.

SEC. 457. When the writ is allowed by a court it is to be issued by the clerk; but when allowed by a judge, he must issue the writ himself, subscribing his name thereto without any seal.

Disallowance of writ.

SEC. 458. If the writ is disallowed, the court or judge shall cause the reasons of said disallowance to be appended to the petition and returned to the person applying for the writ.

When writ may be issued without application.

SEC. 459. Whenever any court or judge authorized to grant this writ, has evidence from a judicial proceeding before them, that any person within the jurisdiction of such court or officer, is illegally imprisoned or restrained of his liberty, it is the duty of such court or judge to issue or cause to be issued the writ aforesaid, though no application be made therefor.

Service of the writ.

SEC. 460. The writ may be issued[served] by the sheriff or by any other person appointed for that purpose by the court or judge by whom it is issued or allowed. If served by any other than the sheriff, he possesses the same power, and is liable to the same penalty for non-performance of his duty as though he were the sheriff.

Mode of service.

SEC. 461. The proper mode of service is by leaving the original writ with the defendant and preserving a copy thereof, on which to make the return of service, as in civil actions.

When defendant cannot be found.

SEC. 462. If the defendant cannot be found, or if he have not the prisoner in custody, the service may be made upon any person having the prisoner in his custody, in the same manner, and with

the same effect as though he had been made defendant therein, and if necessary, may make service by arresting the prisoner, or the defendant, or both of them.

Persons having writ possess same power as sheriff.

SEC. 463. In order to make such arrest, the sheriff, or other person having the writ, possess the same power as is given to a sheriff for the arrest of a person charged with a felony.

Person having writ may take prisoner into custody.

SEC. 464. If the prisoner can be found, and if no one appear to have the charge or custody of him, the person having the writ may take him into custody and make return accordingly; and to get possession of the prisoner's person in such cases, he possesses the same power as is given by the last section for the arrest of the defendant.

Writ of habeas corpus must not be disobeyed for defect, provided enough is stated to show the intent, &c.

SEC. 465. The writ of habeas corpus must not be disobeyed for any defect of form or misdescription of the imprisoned or defendant; *Provided*, Enough is stated to show the meaning and intent of the writ.

Person served with the writ, presumed to be the person to whom directed.

SEC. 466. Any person served with the writ is to be presumed to be the person to whom it is directed, although it may be directed to him by a wrong name or description, or to another person.

Defendant must answer when service made.

SEC. 467. Service being made, the defendant must appear at the proper time and answer the said petition.

Body to be brought.

SEC. 468. He must also bring up the body of the plaintiff, or show good cause for not doing so.

Penalty for refusing to comply.

SEC. 469. A wilfull failure to comply with the above requisitions, renders the defendant liable to be attached for a contempt and to be imprisoned till a compliance is obtained, and also subject him to the forfeiture of one thousand dollars to the party thereby aggrieved.

How attachment to be served.

SEC. 470. Such attachment may be served by the sheriff or any other person thereto authorized by the judge, who shall also be empowered to bring up the body of the plaintiff forthwith, and has for this purpose the same powers as are above conferred in similar cases.

Prosecuting attorney must be informed of the writ.

SEC. 471. The court or officer allowing the writ, must cause the prosecuting attorney of the proper county to be informed of the

issuing of the writ, and of the time and place, when and where it is made returnable.

What defendant must state.

SEC. 472. The defendant in his answer must state plainly and unequivocally whether he then has, or at any time, has had the plaintiff under his control and restraint, and if so, the cause thereof.

Authority of transfer.

SEC. 473. If he has transferred him to another person, he must state that fact, and to whom and the time thereof, as well as the reason or authority therefor.

When held by legal process.

SEC. 475. If he holds him by virtue of a legal process or written authority a copy thereof must be annexed.

Plaintiff may demur or reply to defendant's answer.

SEC. 476. The plaintiff may demur or reply to the defendant's answer and all issues joined thereon shall be tried by the judge or court.

What replication may state.

SEC. 477. Such replication may deny the sufficiency of the testimony to justify the action of the committing magistrate, on the trial of which issue all written testimony before such magistrate, may be given in evidence before the court or judge in connection with any other testimony, which may then be produced, and may deny the legality of the proceedings, or the right of the defendant to restrain such person of his liberty.

What is not permissible.

SEC. 478. But it is not permissible to question the correctness of the action of a grand jury in finding a bill of indictment or of the petit jury in the trial of a cause, nor of a court or judge when acting within their legitimate province, and in a lawful manner under the laws of this Territory.

When plaintiff discharged.

SEC. 479. If no sufficient legal cause of detention is shown the plaintiff must be discharged.

Court may order prisoner to be held in custody.

SEC. 480. Although the commitment of the prisoner may have been irregular, still if the court or judge is satisfied from the evidence before them that he ought to be held to bail or committed either for the offence charged or any other, the order may be made accordingly.

Prisoner may be let to bail.

SEC. 481. The prisoner may also in any case, be committed, let to bail, or his bail be mitigated or increased as justice may require.

Prisoner retained until writ decided.

SEC. 482. Until the sufficiency of the cause of restraint is determined, the defendant may retain the prisoner in his custody and may use all necessary means for that purpose.

Trial may be had in absence of the prisoner.

SEC. 483. The prisoner in writing, or his attorney may waive his right to be present at the trial, in which case the proceedings may be had in his absence. The writ will in such cases be modified accordingly.

Disobedience to order of discharge.

SEC. 484. Disobedience to any order of discharge, subjects the defendant to attachment for a contempt, and also to the forfeiture of one thousand dollars to the party aggrieved, besides all damages sustained by him in consequence of such disobedience.

SEC. 485. If the defendant attempt to elude the service of the writ of habeas corpus or to avoid the effect thereof, by transferring the prisoner to another, or by concealing him, he shall on conviction be imprisoned in the penitentiary or county jail not more than one year and fined not exceeding one thousand dollars. And any person knowingly aid or abetting in any such act, shall be subject to the like punishment.

Officer to show authority for detaining prisoner.

SEC. 486. Any officer refusing to deliver a copy of any legal process by which he detains the prisoner in custody, to any person who demands such copy and tenders the fees thereof, shall forfeit two hundred dollars to the person so detained.

All the papers to be filed with clerk.

SEC. 487. When the proceedings are before a judge (except when the writ is refused,) all the papers in the case, including his final order, shall be filed with the clerk of the district court of the county wherein the final proceedings were had, and a brief memorandum thereof shall be entered by the clerk upon his judgment docket.

APPROVED January 25th, 1860.

JAMES A. GRAY,
Speaker of the House of Representatives.

ELI CARTER,
President Pro Tem. of the Council.

L. W. BLISS, *Acting Governor.*

PART SECOND.

CIVIL CODE.

AN ACT to adopt and establish a Civil Code for the Territory of Jefferson.

CHAPTER I.

AUTHENTICATION OF STATUTES.

Governor to sign bill.

SEC. 1. When the Governor approves a bill, he shall set his name thereto with the date of his approval.

Constitutional majority can pass bill over the Governor's veto; Form of endorsement thereon.

SEC. 2. When a bill which passes both houses of the General Assembly is returned by the Governor without his signature and with his objections thereto, and upon a reconsideration is passed in both houses by a constitutional majority, it shall be authenticated as having become a law by a certificate endorsed thereon, or attached thereto in the following form:

This bill having been returned by the Governor with his objections thereto, and having upon reconsideration been passed in both houses of the General Assembly by a constitutional majority, has become a law this day of , which certificate shall be signed by the presiding officer of each of the houses.

Bill to become a law if not signed or vetoed within three days after it comes into the Governor's possession.

SEC. 3. When a bill passes both houses of the General Assembly and is not returned by the Governor within three days after it is presented to him, and thereby becomes a law, it shall be authenticated by the Governor, causing that fact to be certified thereon by the Secretary of the Territory in the following manner:

This bill having remained with the Governor three days (Sunday excepted,) the General Assembly being in session, has become a law this day of

J. C., Secretary of the Territory.

CHAPTER II.

WHEN STATUTES TAKE EFFECT.

Criminal code.

SEC. 5. Part first of this statute being the Criminal Code, shall be in force and take effect from and after the first day of January, A. D. 1860.

Civil code.

SEC. 6. Part second of this statute being the Civil Code, shall be in force and take effect from and after the first day of January, A. D. 1860.

General laws.

SEC. 7. Part third of this statute, being the general acts and laws of the first General Assembly, shall be in force and take effect from and after the date of their approval.

Special acts and charters.

SEC. 8. Part fourth of this statute being the special acts and charters, shall be in force and take effect from and after the date of their approval.

Law hereafter passed.

SEC. 9. The acts and laws of each General Assembly hereafter convened, shall be in force and take effect on the sixtieth day after the adjournment of such General Assembly, unless otherwise especially provided for in such acts and laws.

CHAPTER III.

COUNTIES.

Counties are bodies corporate.

SEC. 10. Each county now or hereafter organized, is a body corporate for civil and political purposes only, and as such, may sue and be sued; shall keep a seal such as provided by law; may acquire and hold property and make all contracts necessary or expedient for the management, control, and improvement of the same, and for the better exercise of its civil and political powers; and may do such other acts and may exercise such other powers as may be allowed by law.

Counties bounded by a stream of water.

SEC. 11. Counties bounded by a stream or other water, have concurrent jurisdiction of the whole of the waters lying between them.

CHAPTER IV.

UNORGANIZED COUNTIES.

Unorganized counties attached to nearest organized counties.

SEC. 12. Counties unorganized shall be attached to the nearest

organized county, for Indian, electoral, and revenue purposes; and shall for those purposes respectively, be deemed to be within the limits of the county to which they are or may be so annexed, and to form a part thereof, unless otherwise provided by law.

Precincts of unorganized counties.

SEC. 13. The County Court of a county to which an unorganized county is attached for election purposes, is required to divide the attached county into precincts, and to determine the place of holding elections in each, and to appoint the judges of election, who shall appoint the clerks. But if such appointment of judges is not made, or if the judges or any of them, do not attend, the electors may choose others in their stead.

Officers of the peace.

SEC. 14. Each precinct in an unorganized county may elect two Justices of the Peace and two Constables.

County officers.

SEC. 15. The electors in unorganized counties are entitled to vote for county officers for the counties to which they are attached.

Organization of counties.

SEC. 16. Any such unorganized county may be organized by a petition of one hundred of its legal voters to the Governor, who shall issue his proclamation calling an election on a specified day, and appoint a judge, as is provided for in an act entitled, "An Act fixing the time of holding County Courts," approved December 6th, 1859.

CHAPTER V.

PROSECUTING ATTORNEY.

Duties of prosecuting attorney.

SEC. 18. It is the duty of the Prosecuting Attorney to appear for the State and county respectively, in all matters in which the State or county may be a party, or interested, in the district or county courts in his county, before any Judge on a writ of habeas corpus, sued out by a person charged or convicted of a public offence, the prosecution being in his county; and in the supreme court, in any of the above proceedings taken thither from his county; and in like manner to appear for the State, Territory or County in any proceeding brought to his county from another by change of venue; and he is authorized, when he deems it advisable, to appear before the Justices of the Peace in the initiatory proceedings in criminal cases.

When proceeding is sent to another county.

SEC. 19. But when any such proceeding is sent to another county, by change of venue, the attorney for the county in which

it originated, may follow it to the other county, and attend to it there in connection with the attorney of that county.

Court to appoint prosecuting attorney in certain cases.

SEC. 20. In the absence of the prosecuting attorney, and in his inability to act in any proceeding, the court before which it is pending may appoint a person to supply his place; and the county Judge may make such appointments in writing, when, in his opinion, the interests of the County or Territory may require it; and such appointment may be made at any time.

Prosecuting attorney constitutional adviser of officers.

SEC. 21. It is also the duty of the prosecuting attorney to give legal advice to the Territory and county officers in matters pertaining to his own county.

Other counsel to be employed.

SEC. 22. The county judge may employ other counsel with the prosecuting attorney, when he deems it advisable.

Salary and fees of prosecuting attorney.

SEC. 23. A prosecuting attorney shall be elected in each county, and shall, in addition to the fees already allowed him by law, be allowed an annual salary of one hundred dollars, payable out of the county treasury quarterly, upon the order of the county court.

CHAPTER VI.

SHERIFF.

Duties of sheriff.

SEC. 24. It is the office of the Sheriff and his deputies to serve or otherwise execute, according to law, and return, all writs and other legal process issued by lawful authority, and to him or them directed or committed, and to perform such other duties as may be required of him by law.

Disobedience to command of process.

SEC. 25. His disobedience of the command of any such process, is a contempt of the court from which it issued, and may be punished by the same accordingly, and he is further, liable to the action of any person injured thereby.

Sheriff to have charge of jail.

SEC. 26. He has the charge and custody of the jail or other prison of his county, and of the prisoners in the same, and is bound to keep those lawfully committed, and to keep them himself, or by his deputy or jailor, until discharged by law.

Sheriff conservator of peace.

SEC. 27. The sheriff and his deputies are conservators of the peace; and to keep the same, or to prevent crime, or to arrest any person liable thereto, or to execute process of law, may call any person to their aid, and when necessary, the sheriff may summon the power of the county.

Sheriff's assistants.

SEC. 28. The sheriff shall attend upon the district court at its session in his county, and he is allowed the assistance of three constables, and of such further number as the court may direct, whose appointment constitutes the special constables, and he shall also attend the courts held by the county judge, when required by him.

No Sheriff to act as attorney.

SEC. 29. No sheriff, deputy sheriff, coroner or constable shall appear in any court as attorney or counsel for any party, nor make any writing or process to commence, or to be in any manner used in the same, and such writing and process made by and of them shall be rejected.

Sheriff not to purchase property.

SEC. 30. No sheriff, deputy sheriff, coroner or constable, shall become the purchaser, either directly or indirectly, of any property exposed by him for sale, under any process of law, and every such purchase is absolutely void.

Powers of sheriff at expiration of term.

SEC. 31. Sheriffs and their deputies may execute any process which may be in their hands at the expiration of their office; and in case of a vacancy occurring in the office of sheriff from any cause, his deputies shall be under the same obligation to execute legal process then, as if the sheriff had continued in office, and he and they will remain liable under the provisions of law, as in other cases.

Sheriff to deliver books and papers to his successor.

SEC. 32. Where a sheriff goes out of office he shall deliver to his successor all books and papers pertaining to the office, and property attached and levied upon except as provided for in the preceding section, and all prisoners in the jail, and take his receipt specifying the same, and such receipt shall be sufficient indemnity to the person taking it.

New process to new sheriff.

SEC. 33. On the election or appointment of a new sheriff, all new process shall issue to such new sheriff.

Sheriff to act as coroner.

SEC. 34. The sheriff of each county shall perform the duties of coroner, and one bond and oath cover the duties of both offices. In case of any suit in which the sheriff is a party or is interested, any constable of the county may perform the duties of sheriff in the progress of such suit.

Vacancies.

SEC. 35. In case of vacancy in the office of sheriff, the county court shall appoint one of the constables of the county to perform the duties until the place is supplied.

Sheriff to hold inquest on dead bodies.

SEC. 36. The Sheriff shall, as Coroner, hold an inquest upon the dead bodies of such persons as are found dead or are supposed to have died by unlawful means; for the purpose of such inquest, he may summon a jury composed of not less than three, nor more than four lawful men of the county.

When perpetrator is known.

SEC. 37. If the inquisition of such jury find that a crime has been committed, and the perpetrator thereof be known, the person charged therewith, shall be forthwith arrested by the Sheriff, and taken before a magistrate for examination.

CHAPTER VII.

SUSPENSION OF CLERKS AND SHERIFFS BY THE JUDGES OF THE DISTRICT COURT.

Judges may suspend sheriff or clerk from office.

SEC. 38. The Judges of the District Court in their respective districts shall have authority, on their own motion, to suspend from office, any Clerk of that Court or Sheriff of a county, for any of the causes mentioned in the division relating to removals from office, coming to their own knowledge, or manifestly appearing from the papers or testimony on any proceeding in court.

Prosecuting attorney to file complaint.

SEC. 39. Upon such suspension, the court may direct the Prosecuting Attorney to file a complaint which shall be in the name of the county upon the relation of the attorney, but it need not be verified by affidavit.

Suspension entered upon the records.

SEC. 40. Such order of suspension shall be entered upon the records of the court, and shall be certified to the County Judge and by him entered.

CHAPTER VIII.

DEPUTIES.

What officers may have deputies; Officer responsible for acts of his deputy.

SEC. 41. The Secretary, Auditor, and Treasurer of the Territory, each Clerk of the District Court, Supreme Court, and County Court, Sheriff and Recorder, may appoint a deputy for whose acts he shall be responsible, and from whom he shall require bond; which appointment must be in writing, and be approved by the officer who has the approval of the principal's bond, and shall be recoverable by the principal's hand; and both the appointment and the revocation shall be filed and kept in the office of the Secretary of the Territory, and County Judge respectively.

Deputy to perform duties of principal in certain cases.

SEC. 42. In the absence or disability of the principal, and in the case of vacancies, the deputy shall perform the duties of his principal pertaining to his office, but when an officer is required to act in conjunction with or in the case of another officer, his deputy cannot supply his place.

No officer to act as deputy for another.

SEC. 43. The Secretary, Treasurer, and Auditor of the Territory can neither of them appoint either of the others his deputy; nor can either the clerk of the District Court or Sheriff of a county, appoint either of the others.

Sheriffs deputies.

SEC. 44. The Sheriff may appoint such number of deputies as he sees fit, but none of his deputies shall be deputy collectors, except where a commission from the county court shall be issued authorizing such deputy to act in the capacity of collector.

Deputy to take the same oath as his principal.

SEC. 45. Each deputy shall take the same oath as his deputy [principal], (reciting the conditions of his principal's bond) which shall be endorsed upon and filed with the certificate of his appointment.

CHAPTER IX.

REMOVAL FROM OFFICE.

Official misdemeanors; Removals; For what cause.

SEC. 46. All county officers, including Justices of the Peace, may be charged, tried, and removed from office for official misdemeanors in the manner and for the causes following:

First: For habitual or wilfull neglect of duty;

Second: For gross partiality;

Third: For oppression;

Fourth: For extortion;

Fifth: For corruption;

Sixth: For wilful mal-administration in office;

Seventh: Conviction of a felony.

Charge tried by district court.

SEC. 47. Any person may make such charge, and the District Court shall have exclusive original jurisdiction thereof by a summons.

Proceedings like other actions.

SEC. 48. The proceedings shall be as nearly like those in other actions as the nature of case admits, excepting where otherwise provided in this chapter.

The complaint and charges.

SEC. 49. The complaint shall be by an accuser against the accused, and shall contain the charges with the necessary speci-

cations under them, and be verified by the affidavit of any elector of the Territory that he believes the charges to be true.

The summons.

SEC. 50. It will be sufficient that the summons require the accused to appear and answer the complaint of A. B., (naming the accuser) for "official misdemeanors;" but a copy of the complaint must be served with the summons.

Questions of fact to be tried as in other actions.

SEC. 51. The questions of fact shall be tried as in other actions, and if the accused is found guilty, judgment shall be entered removing the officer from his office and declaring the latter vacant; and the clerk shall enter a copy of the judgment in the election book, or, if he be accused, a copy of the judgment shall be certified to the county Judge, whose duty it will be to cause it to be entered as above directed.

Both parties liable to costs.

SEC. 52. The accuser and the accused are liable to costs as in other actions.

Courts to appoint.

SEC. 53. When the accused is an officer of the court and is suspended, the court may supply his place by appointment for the term.

CHAPTER X.

ATTORNEYS AND COUNSELLORS.

Who may practice law.

SEC. 54. Any white male citizen of the United States who is actually an inhabitant of this Territory, and who shall by examination, satisfy the court, that he is of a good moral character, may by such court be permitted to practice in all the District courts of the Territory upon taking the usual oath of office.

Attorney to be sworn.

SEC. 55. The supreme court may, on motion, admit any practicing attorney of the district court to practice in the supreme court, upon his taking the usual oath of office.

Attorneys from other states permitted to practice.

SEC. 56. Any practicing attorney in the courts of record of another State or Territory, having professional business in either the supreme or district courts, may, on motion, be admitted to practice in either of the courts upon taking the oath.

Duties of attorneys.

SEC. 57. It is the duty of an attorney and counsellor:

First: To maintain the respect due to the courts of justice, and to judicial officers;

Second: To counsel or maintain no other actions, proceeding or defences, than those which appear to him legal and just, except the defence of a person charged with public offence;

Third: To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth;

Fourth: To maintain inviolate the confidence, and, at any peril to himself, to preserve the secret of his client;

Fifth: To abstain from all offensive personalities, and to advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which he is charged;

Sixth: Not to encourage either the commencement or continuance of an action or proceeding from any motive of passion or interest;

Seventh: Never to reject, for any consideration personal to himself, the cause of the defenseless or the oppressed.

Deceit or collusion of attorneys.

SEC. 58. An attorney or counsellor who is guilty of deceit or collusion, or consents thereto with intent to deceive a court, or judge, or a party to an action or proceeding, is liable to be disbarred, and shall forfeit to the injured party treble damages, to be recovered in a civil action.

Powers of attorney.

SEC. 59. Attorneys and counsellors have power:

First: To execute in the name of his client a bond for an appeal, certiorari, or writ of error, or any other paper necessary and proper for the prosecution of a suit already commenced.

Second: To bind his client by his agreement in respect to any proceeding within the scope of his proper duties and powers, but no evidence of any such agreement is receivable, except the statement of the attorney himself, his written agreement signed and filed with the clerk, or an entry thereof upon the records of the court.

Parties may manage their own case.

SEC. 60. Plaintiffs shall have the liberty of prosecuting, and defendants shall have the liberty of defending in their proper persons.

Attorney may verify pleadings.

SEC. 61. When a party is not within the county where the attorney resides, the attorney may verify any pleadings necessary to the issue therein pending; but in such case the affidavit of verification must set forth the grounds of his knowledge or belief, and the cause of the absence of the party.

Papers to be endorsed.

SEC. 62. Upon filing original papers in any case, it shall be his duty to endorse thereon his name.

CHAPTER XI.

COUNTY RECORDER.

Duty of recorders.

SEC. 63. It shall be the duty of the Recorder to provide books for which the county may repay him, and record all deeds, mortgages, bonds, charters for incorporated companies, liens, claim certificates, and town plats, contracts, or any other instrument of writing given him for record.

Books to be kept by recorder.

SEC. 64. The recorder of deeds must keep an entry book or index, the pages of which are so divided as to show in parallel columns:

First: The grantors;

Second: The grantees;

Third: The time when the instrument was filed;

Fourth: The date of the instrument;

Fifth: The nature of the instrument;

Sixth: The book and page where the record thereof may be found;

Seventh: The description of the lands conveyed, in the manner following:

GRANTOR.	GRANTEE.	DATE OF FILING	DATE OF INSTRUMENT.	CHARACTER OF INSTRUMENT.	BOOK.	PAGE.	DESCRIPTION.	REMARKS.

What Recorder must endorse on instrument.

SEC. 65. The recorder must endorse upon every instrument properly filed in his office for record, the time when it was so filed, naming day and hour, and shall forthwith make the entries provided for in the last preceding section, except that of the book and page where the record of the instrument may be found, and from that time such entries shall furnish constructive notice to all the world of the rights of grantee conferred by such instrument.

Entries to be double, showing names of grantors and grantees.

SEC. 66. The entries of such entry book shall be double, the one showing the names of the respective grantors arranged in alphabetical order. Where there are two or more grantors having dif-

ferent surnames, there must be as many distinct entries among the grantors as there are different names, being alphabetically arranged in regard to each of such names. The same rule shall be followed in case of several grantors [grantees].

Instrument to be recorded soon as possible.

SEC. 67. Every such instrument shall be recorded as soon as practicable, in a suitable book to be kept by the recorder for that purpose. After which he shall complete the entries aforesaid, so as to show the book and page where the record is to be found.

Instrument considered lawfully recorded when filed.

SEC. 68. Every instrument shall be considered lawfully recorded at the time it is filed and entered in the entry book or index.

Date to be entered upon back of instrument.

SEC. 69. After an instrument has been recorded, the recorder shall enter upon its back the words "Filed, December 15th, at 7 o'clock P. M. 1859, (or the date thereof,) recorded in Book 1, Page 3; witness my hand as recorder," to which he shall affix his name and seal of office.

Instrument not valid until recorded.

SEC. 70. No instrument affecting real estate is of any validity against subsequent purchasers for a valuable consideration without notice, unless recorded in the office of the recorder of deeds of the county in which the land lies, as hereinafter provided.

Shall not require mining claims to be recorded.

SEC. 71. The provisions of the last preceding section, shall not be construed as to required mining claims or conveyances thereof, to be recorded in the county recorder's office, provided such district is organized according to law, and the recorder of such district has had his certificate of election recorded in the county recorder's office.

SEC. 72. The records of the county recorder, or a certified copy thereof, or any instrument having his certificate of record on the back thereof, is entitled to credit for the truth thereof, and may be read in evidence in all courts of this Territory.

CHAPTER XII.

MARKS OF ANIMALS.

County Clerk to keep book to record marks of animals.

SEC. 73. The county clerk of each county, shall procure at the expense of the county, a book in which to record the marks and brands of horses, sheep, hogs, and other animals.

SEC. 74. Any person wishing to mark or brand his domestic animals with any distinguishing mark, may adopt his own mark, and have a description thereof recorded by the clerk of the county in which the owner lives.

SEC. 75. No person shall adopt a mark or brand previously recorded to another person residing in the same county, nor shall the clerk record the same one to two persons.

CHAPTER XIII.

OATHS AND ACKNOWLEDGMENTS.

What officers are authorized to administer oaths.

SEC. 76. The following officers are authorized to administer oaths and take and certify the acknowledgment of instruments in writing; each Judge of the Supreme Court, each Clerk of the District Court, each Clerk of the County Court, each Justice of the Peace within his county, and each Notary Public within his county.

SEC. 77. Persons conscientiously opposed to swearing may affirm, and shall be subject to the pains and penalties of perjury as in case of swearing.

CHAPTER XIV.

NOTES, BILL, AND TENDER.

Notes signed by any person are negotiable.

SEC. 78. Notes in writing made and signed by any person promising to pay to another person or his order, or bearer, or to bearer only, any sum of money, are negotiable by endorsement or delivery in the same manner as inlaid bills of exchange according to the custom of merchants.

Action may be brought against maker or endorser.

SEC. 79. The person to whom such sum of money is made payable, may maintain an action against the maker, and any person to whom such note is so endorsed or delivered, may maintain his action in his own name against the maker or endorser or both of them.

Bonds, due bills, &c., assignable in endorsement.

SEC. 80. Bonds, due bills, and all instruments in writing by which the maker promises to pay to another without words or negotiability a sum of money, or by which he promises to pay a sum of money, in property or in labor, or to pay or deliver any property or labor, or acknowledges any money or labor or property to be due, are assignable by endorsement thereon or by other writing, and the assignee shall have a right of action in his own name subject to any defense or set off legal or equitable which the maker or debtor had against any assignor thereof before notice of his assignment.

When negotiable.

SEC. 81. Instruments by which the maker promises to pay a sum of money in property or labor, or to pay or deliver property

or labor or acknowledges property or labor or money to be due to another, are negotiable instruments with all the incidents of negotiability whenever it is manifest from their terms that such was the intent of the maker, but the use of the technical words "order" or "bearer" alone will not manifest such intent.

Defendant may avail himself of set off.

SEC. 82. When by the terms of an instrument its assignment is prohibited, an assignment of it shall nevertheless be valid, but the maker may avail himself of any defense or set off, legal or equitable, against the assignee which he may have against any assignor thereof before suit is commenced thereon.

Account may be assigned.

SEC. 83. An open account of sums of money due on contract, may be assigned, and the assignee will have the right of action in his own name, but subject to the same defences and setoffs as the instruments mentioned in the preceding section.

Of endorsements.

SEC. 84. The blank endorsement of an instrument for the payment of money, property, or labor, by a person not a payee, endorsee, or assignee, thereof, shall be deemed a guarantee of the performance of the contract.

Guarantor must have notice.

SEC. 85. To charge such guarantor notice of non-payment by principal must be given within a reasonable time, but guarantor is chargeable without notice, if the holder show affirmatively that the guarantor has received no detriment from the want of notice.

Indorser liable to action of indorsee.

SEC. 86. An endorser of a negotiable instrument, and a guarantor as contemplated in the preceding section, is liable to the action of an indorsee, assignee, or payee, without notice if the endorsee, assignee, or payee, have used due diligence in the institution and prosecution of a suit against the maker or his representative.

Assignor liable.

SEC. 87. The assignor of any of the above instruments not negotiable shall be liable to the action of his assignee without notice.

Days of grace.

SEC. 88. Three days of grace are allowed on bills of exchange according to the custom of merchants, but not on any other instruments; and a demand at any time during the three days of grace, will be sufficient for the purpose of charging the endorser.

Maker of note may deposit money with the clerk.

SEC. 89. When the holder of an instrument for the payment of money is absent from the Territory when it become due, the

maker may deposit the amount thereof with the clerk of the District Court.

Contracts for labor, &c.

SEC. 90. No contract for labor, or for the payment or delivery of property (other than money) in which the time of performance is not fixed, can be converted into a money demand until a demand of performance has been made, and the maker refuses, or a reasonable time is allowed for performance.

Where payment may be made or tendered.

SEC. 91. When a contract for labor or for the payment or delivery of property, (other than money) does not fix a place of payment, the maker may tender the labor or property at the place where the payee resided at the time of making the contract, or at the residence of the payee at the performance of the contract, or where the assignee of the contract resides when it becomes due.

Assignment of written instrument before due.

SEC. 92. When the contract is contained in a written instrument which is assigned before due, and the maker has notice thereof, he shall make the tender at the residence of the holder, if he reside in the Territory, and no farther from the maker than did the payee at the making thereof.

What discharges the maker.

SEC. 93. A tender of the property discharges the maker from the contract, and the property becomes vested in the payee or his assignee; but if he refuses to accept the property, the party making the tender may retain it in his own possession, and has a lien on the property for his reasonable expenses in taking care of or feeding the same.

Gold dust a legal tender.

SEC. 94. When the obligation calls for, or is payable in money, in any manner, the maker or person who stands charged with the indebtedness, may tender to the assignee, payee, or holder, any money in coin, or any gold dust at its current value.

Effect of legal tender.

SEC. 95. A tender of the money or gold dust thus made, discharges the maker of the contract or the person indebted, from all liability or obligation to damage, interests or costs, in any action upon such demand, to the amount of the money or gold tendered; and if the tender thus made be not accepted, he may retain it in his possession.

Receipt may be demanded.

SEC. 96. The person making the tender may demand a receipt in writing, duly signed, for the money or article tendered, as a condition precedent to the delivery thereof.

CHAPTER XV.

THE RATE OF INTEREST.

Ten per cent. the legal rate of interest, unless by agreement in writing.

SEC. 97. The rate of interest shall be ten cents on the hundred by the year, in the following cases:

First: On money becoming due by express contract, unless a different rate be expressed in writing;

Second: On judgment and decrees for the payment of money;

Third: On money received to the use of another and retained beyond a reasonable time, without the owner's consent, expressed or implied;

Fourth: On money due upon open account after the date of the last item.

No judgment to draw more than ten per cent.

SEC. 98. On contracts for the payment of money where a different rate of interest from the above is specified, interest shall be paid at the rate specified in the contract; but no judgment or decree thereon shall draw more than ten per cent. per annum.

CHAPTER XVI.

PRIVATE SEALS.

Private seals not to affect the character of instrument.

SEC. 99. The use of private seals in written contracts (except the seals of corporations) is hereby abolished; and the addition of a private seal to an instrument of writing, hereafter made, shall not affect its character in any respect.

What written contracts import.

SEC. 100. All contracts in writing, hereafter made and signed by the party to be bound, or his authorized agent or attorney, shall import a consideration in the same manner as sealed instruments now do.

CHAPTER XVII.

TRANSFER OF PERSONAL PROPERTY.

No sale of property valid against existing creditors.

SEC. 101. No sale or mortgage of personal property, where the vendor or mortgagor retains actual possession thereof, is valid against existing creditors or subsequent purchasers without notice, unless a written instrument conveying the same is executed, acknowledged like conveyance of real estate, and filed for record with the recorder of deeds of the county where the holder of the property resides.

Such instrument recorded.

SEC. 102. Whenever any written instrument of the character above contemplated is filed for record as aforesaid, the recorder shall note thereon the day and hour of filing the same, and forthwith enter the same in his entry book, as in cases of land property.

CHAPTER XVIII.

CLAIMS ON LAND.

Occupant to have title to 160 acres of land.

SEC. 103. The occupant of what is known as a valid claim or improvement upon the public lands, will be deemed to have the title and possession thereof to the extent of one hundred and sixty acres, unless he occupy the same by virtue of a contract as a tenant or lessee, under the rightful owner of the claim.

When such claim considered valid.

SEC. 104. Such claim shall be considered valid when the taker-up, who is the constructive occupant and has the constructive possession, or his assignee, has marked it out and so designated the boundaries thereof that they can be easily traced and readily known, and has also complied with the laws of the Territory.

His interest therein transferable.

SEC. 105. The constructive occupant or his assignee, who is the rightful owner, if the laws of the Territory have been complied with, of what is known as a valid claim, has a transferable interest therein which may be sold on execution or otherwise.

Rights of the purchaser.

SEC. 106. Any such sale or transfer, made by deed, is sufficient to convey the right and invest the same in the purchaser.

Protection.

SEC. 107. Any person having a valid claim, may protect and defend his right and possession by the proper civil action.

CHAPTER XIX.

CONVEYANCE AND LAND PROPERTY.

Contract respecting land must be in writing.

SEC. 108. Every contract, in any manner relating to or affecting land property, shall be reduced to writing, except it be for a temporary rent or lease for a short time.

Forms of conveyancing.

SEC. 109. Every instrument in writing for the conveyance or transfer of land property, which contains in substance the following form, shall be sufficient:

Know ye, That for and in consideration of the sum of
to me in hand paid, the receipt of which
is hereby acknowledged, I, do hereby

bargain, grant, sell, and convey, unto _____ all my right, title and interest in and to the following described tract or lot of land, situated in the county of _____, Territory of Jefferson, to wit: (*here describe the lot or land sold.*)

To have and to hold the said premises unto the said _____, his heirs and assigns forever, (*to which may or may not be added a covenant to warrant and defend against any certain claim, or all claims, as the parties may agree upon. If the instrument be a mortgage, the following words may be inserted after covenant, if any:*) Whereas the said _____ is justly indebted to the said _____ in the sum of _____: Now if the said _____ shall and truly pay to the said _____ (*here describe the note or obligation*) then this transfer shall be null and void, and all the interest herein conveyed, shall revert to the said _____

In witness whereof, I have set my hand this _____ day of _____ A. D., 186 _____.

In presence of, } (Signed) _____
C. B. }

The substance of the following acknowledgment shall be sufficient:

JEFFERSON TERRITORY, } ss.
County of _____ }

Personally appeared before me, _____ a Justice of the Peace, (or as the case may be) in and for said county, the foregoing grantor, and acknowledged the execution of the above deed to be his voluntary act for the purposes therein expressed.

In witness whereof, I have hereunto set my hand and official signature (or seal) this _____ day of _____ A. D., 186 _____.
F. D., Justice of the Peace.

Effect of conveyance.

SEC. 110. Every conveyance of land property passes all the interest of the grantor therein, unless a contrary intent can be reasonably inferred from the terms used.

Fraudulent conveyances.

SEC. 111. Where a deed purports to convey a greater interest than the grantor was at the time possessed of, any after acquired interest of such grantor to the extent of that which the deed purports to convey enures to the benefit of the grantee.

Adverse interest may be sold.

SEC. 112. Adverse possession of land property, does not prevent any person from selling his interest in the same.

SEC. 113. Estates may be created to commence at a future day.

Rights of married women.

SEC. 114. Any married woman may hold in her own name

all property which she may have acquired by descent, legacy, gift, or purchase, which property shall be her own right, and shall not in any manner be liable to execution for the debts of her husband.

Contracts of wife do not bind her husband.

SEC. 115. Contracts made by a wife in relation to her separate property or those purporting to bind herself only, do not bind her husband.

Woman may convey land.

SEC. 116. A married woman may convey her interest in land property in the same manner as other persons.

Tenants at will.

SEC. 117. Any person in the possession of land property with the assent of the owner, is presumed to be a tenant at will, unless the contrary is shown.

Notice in writing.

SEC. 118. Three days' notice in writing is necessary to be given by either party, before he can terminate a tenancy at will.

Mortgagor retains title.

SEC. 119. In the absence of stipulations to the contrary, the mortgagor of land property retains the legal title and right of possession thereof.

Construction of terms.

SEC. 120. Wherever the words *Real Estate*, *Real Property*, *Land Property*, or *Realty* occur in the Laws of this Territory, they shall be construed to be synonymous, and shall be construed to apply to claims on public lands, or town lots, or any other constructive interest on lands or lots, as the sense of the application may require. The application of such terms to claims, or lots, or any other interest in the constructive possession to lands, shall be the same as is applied to the term "Realty" by the Common Law.

CHAPTER XX.

MARRIAGE.

Who may marry.

SEC. 121. A marriage between a male person of sixteen and a female of fourteen years of age is valid, but if the female has not attained the age of eighteen years or the male twenty-one years, the consent of the parent or guardian of any such minor must be obtained to such marriage, and any person who joins any such minor in marriage, without first obtaining the consent of the parent or guardian, shall forfeit any sum not less than one hundred nor more than five hundred dollars, to be recovered in a civil action before any court of competent jurisdiction by such parent

or guardian; *Provided*, that no white person shall be married to any person being a negro or mulatto of one eighth negro blood.
Who may solemnize.

SEC. 122. Marriage ceremonies may be performed and solemnized, by a judge of the supreme or district court, by a judge of the county court or a justice of the peace of the county, or a mayor of a city wherein the marriage takes place; or by a licensed Minister of the Gospel according to the rules of his church.

Marriage certificate.

SEC. 123. After the marriage, the officiating minister or magistrate shall, on request, give each of the parties a certificate thereof, and shall deliver within forty days, a certificate of such marriage to the county recorder who shall record the same.

CHAPTER XXI.

JURIES.

How jurors to be drawn.

SEC. 124. The regular panel of the grand jury shall be made up as follows, to wit: The county court shall, at their first meeting thereafter, select from the poll books of the different precincts, a proportionate number of the names of the persons most permanently located and best qualified to act as jurors, to the number of one hundred, or if there be not that many persons in the county, then all the names on the poll books.

SEC. 125. The county court shall place the names so selected upon separate slips of paper, and put them in a box, which shall be shaken well, so as to intermingle them together.

County judges to draw names from box.

SEC. 126. The county judge shall draw from the box fifty-two names, which shall be entered upon the records of the county court.

County clerk to certify.

SEC. 127. The county clerk shall make a certified copy of the names so recorded, to the clerk of the district court, who shall record them in the minute book of the court.

If Grand Jury is required courts to issue venire.

SEC. 128. On the first day of the sitting of the district court, it shall be the duty of the court to enquire if the services of a grand jury are likely to be required, and if so, he shall order a venire to be issued, returnable on the next morning of the term, or as the court may direct, which order shall be entered upon the record.

Duty of clerk respecting drawing of jurors.

SEC. 129. When the court shall at any time order a venire issued for the summons of a grand jury, the clerk shall put the

names included in the last list which has been returned to him by the county clerk, upon slips of paper, and put them in a box; then, after being well shaken, he shall draw therefrom thirteen names, who shall be summoned as the grand jury; and those names shall be entered upon the records of the court, and the slips of paper thus drawn shall be thrown away, and those remaining in the box shall be drawn from for the next grand jury required to be impaneled, and so on, for the third and fourth grand juries, when all the names in the list shall have been exhausted.

Number of persons to compose a jury.

SEC. 130. Each grand jury shall be composed of thirteen members; and if, from any cause, the panel of the grand jury so selected shall not be full, the court shall order the sheriff to summons talesman till the panel shall be complete.

When county clerk fails to return list of names court may order jury impaneled.

SEC. 131. If from any cause, the clerk of the county shall have failed to return the list of names to the clerk of the district court, or the grand jury shall have failed to attend, it shall be lawful for the court to order a grand jury impaneled, under such directions as are just and right.

SEC. 132. The court may, in any court or vacation, make an order for the issuing and serving a venire for the grand jury, according to the foregoing provisions: To appear at the next term of the district [court], on the first day of the term, when he has a knowledge of the fact that such jury will be required.

Competent jurymen.

SEC. 133. All qualified electors of the Territory of good moral character, sound judgment, and in full possession of the senses of hearing and seeing, and who have not been convicted of any infamous crime are competent jurors in their respective counties.

Persons exempt from serving as jurors.

SEC. 134. The following persons are exempt from liability to act as jurors, to wit: All persons holding office under the laws of the United States or this Territory; all practicing attorneys, physicians, and clergymen; all persons disabled by bodily infirmity, or over sixty years of age.

Petit jury to be composed of twelve persons.

SEC. 135. A petit jury impaneled for the trial upon the charge of any public offence, shall consist of twelve competent jurors, accepted and sworn to try the issue; but a jury for the trial of any civil case may be composed of a less number if it is so agreed upon by the parties and entered upon the record.

Manner of mispaneling a jury.

SEC. 136. When a petit jury is required, the court shall order

on their minutes a *tales* for any number of jurors not exceeding twelve names returnable according to the order of the court, and to be summoned as directed by the court, out of which persons so ordered to be summoned, it shall be lawful to impanel a jury for the trial of any case in the district court.

Additional talesman may be ordered.

SEC. 137. Should the *tales* ordered be insufficient by reason of challenges or otherwise, to form an impartial jury, the court may from time to time make such further order for *talesmen* until a full jury shall be obtained.

Proceeding when petit jury is required.

SEC. 138. If the court during any term or vacation, shall be satisfied that a petit jury will be required at the next term of the court, he shall order a venire issued, returnable under his directions, which shall be entered upon the record by the clerk.

Court may direct the manner of making up jury list.

SEC. 139. If in the discretion of the clerk and the court, it is expedient and just to form a petit jury in a more guarded and particular manner, the court shall make an order in writing directing the manner for the making up of said jury list and the summoning of the same, which order and all the proceedings connected therewith shall be entered upon the record of the court.

CHAPTER XXII.

PARTIES TO ACTIONS.

Plaintiff and defendant.

SEC. 140. The party seeking to obtain or enforce a contract by any proceeding, is, so far as that proceeding is concerned the plaintiff, the other party the defendant.

Prosecution of civil actions.

SEC. 141. Civil actions must be prosecuted in the name of the real parties in interest, except in the cases of trustees or other persons legally authorized to sue for another.

Joining of interests.

SEC. 142. When not otherwise provided, all persons interested in obtaining the relief sought, may be joined as plaintiffs, those having adverse interests as defendants.

United interest in action.

SEC. 143. Persons having an united interest, must be joined on the same side, either as plaintiffs or defendants; but when some who should be made plaintiffs, refuse to join, they may be made defendants, the reason thereof being set forth in the petition.

Cases of general interest to several persons.

SEC. 144. When the question is one of common or a general interest to many persons, or when the parties are very numerous, and it is impracticable to bring them all before the court, one or

more may sue or defend for the benefit of the whole.

Liability of makers and endorsers of notes.

SEC. 145. Persons jointly and severally liable on the same instrument, including the makers and endorsers of negotiable paper and sureties may all, or any part of them be joined in the same action.

Bringing in other parties.

SEC. 146. If a complete determination of the controversy cannot be had, without joining other parties, they may be brought in by amendment of the petition by a supplemental petition and summons.

Who may defend certain actions.

SEC. 147. In actions for the recovery of property, any person not a party thereto, on showing himself interested in the subject matter of the suit may be allowed to appear and defend therein.

Substitution of other persons as defendants.

SEC. 148. At any time before answering, the defendant may obtain the substitution of any person in his place, who is not already a party to the suit, who claims the subject matter of the suit, (the money or property.)

How substituted; Original defendant to be discharged.

SEC. 149. For this purpose he must file his affidavit, stating the facts upon which he founds his application, and denying all collusion with the person whom he seeks to substitute as defendant. If in answer to a rule against the plaintiff, sufficient cause be shown, the court shall make the order of substitution and discharge the original defendant from all liability to either party.

Wife may defend.

SEC. 150. If husband and wife are sued together, the wife may defend her own, or that of her husband also.

Minors must sue or defend by their guardians.

SEC. 151. Minors may sue by their guardian who shall be responsible for the cost of suit. They may also defend by guardian.

Those who have no guardian sue by their next friend.

SEC. 152. Those who have no guardian may sue by their next friend, who shall be responsible for costs. The court may appoint a guardian ad litem to defend for a minor who has no other guardian.

Suits against partners.

SEC. 153. Partners may sue or be sued in their proper or partnership name. Their individual property shall be liable to any judgment against them unless sufficient cause be shown to the contrary.

Suit founded on written instrument.

SEC. 154. When an action is founded on a written instrument, suit may be brought by or against any of the parties thereto by the

same name and description as those of which they are designated in such instrument.

Suit on bond given to Territory or county.

SEC. 155. When a bond or other instrument given to the Territory or county or to any officer or persons, is intended for the security of the public generally or of a particular individual, suit may be brought thereon in the name of any person intended to be thus secured who has sustained any injury in consequence of a breach thereof.

How defendant may be described.

SEC. 156. When the precise name of any defendant cannot be ascertained he may be described as accurately as practicable, and when the name is ascertained it shall be substituted in the further proceedings in the case.

Corporations.

SEC. 157. Corporation foreign or domestic, may bring suits in this Territory in their corporate name.

Unmarried woman.

SEC. 158. An unmarried woman may prosecute an action for her own seduction, and recover such damages as may be awarded in her favor.

Seduction of minor daughter or ward.

SEC. 159. The father, mother or guardian, as the case may be, may also bring suit for the seduction of a minor daughter or ward, though such daughter or ward be not living with, nor in the service of, the plaintiff, and though there be no loss of service; but where the action is brought by the guardian, the damages recovered shall inure to the sole benefit of the ward.

Settling adverse claims.

SEC. 160. An action may be brought by one person against another, for the purpose of settling an adverse claim, which the latter makes against the former, to be regulated by such rules as the court may prescribe.

CHAPTER XXIII.

THE PLACE OF BEGINNING SUIT.

Where action may be commenced.

SEC. 161. Except where otherwise provided, actions may be brought in a county where some of the defendants actually reside; but if none of them have any residence within this Territory, they may be sued in any county wherein either of them may be found.

Where suit brought in the wrong county.

SEC. 162. If a suit be brought in a wrong county, it may be there prosecuted to a termination, unless the defendant demand a change of venue to the proper county.

Change of venue.

SEC. 163. In case of such change of venue the court shall order the same, at the cost of the plaintiff, and may award the defendant a reasonable compensation for his trouble and expenses in attending at the wrong county.

Attachment of property.

SEC. 164. In cases of attachment of property when the defendant is not served, or in cases where the suit is brought to obtain possession of personal property, or to enforce a lien or mortgage, or when it relates to land property it may be brought in any county where the property or any portion of it lies, or where any part of the personal property may be found.

Breach of contract.

SEC. 165. When, by its terms, a contract is to be performed in any particular place suit for a breach thereof may be brought in the county wherein such place is situated.

Where a suit may be brought against a corporation.

SEC. 166. When a corporation, company, or an individual has an office or agency in any county, for the transaction of business, any suits growing out of, or connected with, the business of that office or agency, may be brought in the county where such office or agency is located, as though the principal resided therein; and service on any agent or clerk employed in such office or agency shall be sufficient service upon the principal.

CHAPTER XXIV.

THE MANNER OF COMMENCING ACTIONS.

Service.

SEC. 167. Actions originating in the district court, are to be commenced by serving the defendant with the notice hereinafter described.

Form of summons.

SEC. 168. Such notice is to be known as the original notice, and must inform the defendant of the name of the plaintiff; that on or before a certain day, therein named, a petition will be filed in the office of the clerk of the district court of _____ county, claiming of him (here state briefly the substance of the remedy sought) and that, unless he appears and pleads thereto, by _____ (stating the time when, by law or by the rules of the court, he is required to plead) default will be entered against him and judgment rendered thereon.

Filing of petition.

SEC. 169. If the petition is not filed by the time thus fixed, or if not filed six days before the first day of the next term, the action will be deemed discontinued, unless good cause be shown for the failure.

Sheriff's return.

SEC. 170. If the notice is placed in the hands of the sheriff for service, he must note thereon the time when thus left with him.
Notice served by any person.

SEC. 171. The notice may be served by any person not a party to the action, and either within or without the limits of the Territory, which service must be sworn to.

Return may be made by mail.

SEC. 172. If served out of the county in which the suit is pending, return may be made by mail, and the postage thereon taxed among the costs.

Time of service.

SEC. 173. If not served six days before the then next term, the cause shall stand continued, unless a trial be had by consent of parties.

Service to be made by reading; Copy at residence.

SEC. 174. The service is to be made by reading the same to the defendant and giving him a copy, if demanded. If not found, he may be served by a copy, left at his usual place of residence, with some member of the family more than fourteen years of age.

Defendant to have copy of petition.

SEC. 175. Unless previously served with a copy of the petition, the defendant may at any time require a copy thereof to be sent to him through the post office, directed to any place he may designate.

What returns must state.

SEC. 176. The return may state the time and manner of making the service. If made by leaving a copy as aforesaid, it must state at whose house, and the name of the person with whom the same was left, or a sufficient reason must be given for omitting to do so. If served personally, it must state whether a copy of the petition was required, and if so, to what point it was to be directed.

Several defendants.

SEC. 177. The plaintiff may notify either of the defendants that no personal claim is made against him, in which case a copy of that notice must accompany the return. If after such notice and return such defendant unreasonably defend the action, he must pay costs to the plaintiff.

Notice by publication.

SEC. 178. Upon a return of "not found" as to all or any of the defendants, service on such defendants may be made by giving notice of the commencement of the action for two weeks successively, in some newspaper printed as convenient as practicable to the court wherein the suit is pending, to be determined by the clerk of the court.

Suits against counties or corporations.

SEC. 179. If a county is defendant, service may be made upon

the clerk of the county court. If any other civil corporation, upon a trustee or other officer thereof.

Corporations.

SEC. 180. When an action is brought against a corporation of any other description, service may be made upon either of its officers, or upon any clerk engaged in the active management of the ordinary business of the corporation.

Partnership.

SEC. 181. If brought against a partnership or corporation having no officers, service may be made upon any member thereof, or upon any agent employed in the general management of their business.

Suits against minors and insane persons.

SEC. 182. If against a minor or insane person, service must be made upon the defendant personally, and in case of insane defendant or those under the age of fourteen years, service must be made upon the father, mother or guardian, and if there be none such within the Territory, then upon the person having the legal care and control of such persons if there be any.

SEC. 183. Upon being served in either of the methods hereinbefore prescribed, the defendant shall be considered in court.

Several defendants.

SEC. 184. Where a part of the defendants, who should be individually served with process, cannot be found, the plaintiff instead of procuring service upon them by publication, may proceed as though all the defendants were in court; but the judgment in such cases shall not be valid as to those not served, until by scire facias they have had a full opportunity of showing cause against the judgment.

Proof of service.

SEC. 185. The service of papers is sufficiently proved:

First: By the written admission of the defendant;

Second: By the return of the sheriff of the county where made;

Third: By the affidavit of any other person who made the same;

Fourth: By the proof of publication in the manner above required.

CHAPTER XXV.

CHANGE OF VENUE.

Of change of venue, when granted.

SEC. 186. A change of venue in any civil action may be had in any of the following cases:

First: When the county in which the suit is pending is a party thereto;

Second: Where the judge is a party or is directly interested in

the suit, or is connected by blood or affinity with any person so interested nearer than in the fourth degree.

Third: When either party files an affidavit stating that the inhabitants of the county are so prejudiced against him, or that the opposite party or his attorney, has such an undue influence over the inhabitants of the county, that he cannot expect an impartial trial.

Change to some other county in same district.

SEC. 187. The venue shall be changed to some other county in the same district, unless the objections are to the judge, or unless the same objection, for which the change was made, exists to all the other counties of the district.

Application made to judge.

SEC. 188. The application for the change of venue, may be made either to the court or to the judge in vacation, and the change shall be to the most convenient county to which there is no exception of the character of any of those above enumerated. No party is entitled to more than one change of venue, except for causes not in existence when the first change was taken.

Papers transferred to the other county.

SEC. 189. If the change of venue be allowed, the clerk or court shall make a certified copy of the judgment, which together with all the papers in the case, shall be docketed and proceeded with as though it had originated in that court.

Clerk may require payment of cost.

SEC. 190. The costs occasioned by such change of venue shall be paid by the applicant, and not taxed as a part of the costs of the case, and the clerk may require payment of such costs before the transcript and papers are transmitted as aforesaid.

Effect of failure to transmit papers.

SEC. 191. No discontinuance shall result from the papers not being transmitted and filed in due time, in the manner aforesaid, provided such failure was not owing to the negligence of the plaintiff in the case.

Same provision extended to justices and miners courts.

SEC. 192. The provisions of this division on the subject of a change of venue, shall be applicable to justices and miners courts upon the express condition, that the change shall be taken to courts of the same grade and in the same county, and the miners courts shall be of superior grade compared with justices courts, and when it is necessary to make it applicable, the word court may be construed to read clerk and the word clerk to read court, and the word "county" to read "precinct" or district, and *vice versa* as the case may require to make sense.

Provided, The change may be made from a justice in one precinct, to a justice of the same precinct.

CHAPTER XXVI.

PLEADINGS.

What are pleadings.

SEC. 193. The pleadings are:

First: The petition by the plaintiff;

Second: The answer or demurrer or reply by the defendant;

Third: The demurrer or reply by the plaintiff.

Technical forms abolished.

SEC. 194. All technical forms of actions and of pleadings are hereby abolished.

Sufficient plea.

SEC. 195. Any plea which possesses the following requisites shall be deemed sufficient:

First: When to the common understanding it conveys a reasonable certainty of meaning;

Second: When by a fair and natural construction it shows a substantial cause of action or defence.

When defective.

SEC. 196. If defective in the first of the above particulars, the court on motion, shall direct a more specific statement. If in the latter it is ground for demurrer.

What the petition must contain.

SEC. 197. The petition must contain,

First: The name of the court and the county in which the action is brought, and the names of the parties, plaintiff and defendant.

Second: A statement of facts constituting the cause of action;

Third: If recovery of money be the cause of action, the amount demanded must be stated;

Fourth: A demand of the relief to which the party supposes himself entitled.

More than one cause of action.

SEC. 198. Where the petition contains more than one cause of action, each shall be separately stated.

Defendants answer.

SEC. 199. The defendant shall demur or answer or do both on or before the morning of the second day of the court at which he is required to appear, unless the court by general rule or special order otherwise direct.

What defects are subject to demurrer; When to demur.

SEC. 200. The defendant may demur to the petition for any of the following defects:

First: When the court has no jurisdiction of the person of the defendant, or the subject of the action;

Second: When the plaintiff has no legal capacity to sue;

Third: When there is another action pending between the parties for the same cause;

Fourth: Where there is defect of parties, plaintiff or defendant;

Fifth: When several causes of action are improperly joined;

Sixth: When the petition does not state facts sufficient to constitute a cause of action;

Seventh: When the return is improperly made.

Eighth: When the service has not been legally made;

Ninth: When any of the proceedings or papers by which the defendant has been brought into court are not legal, or have not been proceeded upon in a legal manner;

Tenth: When there are any other illegal proceedings or papers.
What demurrer shall specify.

SEC. 201. The demurrer shall specify distinctly the grounds of objection to the petition or other pleading.—Demurrers to formal defects are abolished.

Demurrer to be cause of non suit.

SEC. 202. When a demurrer is sustained for cause first, second or third, it shall be a sufficient cause of non suit, at the plaintiff's cost.

Petition may be amended.

SEC. 203. When a demurrer is sustained for cause fourth, fifth, sixth or seventh, it may be amended on motion of plaintiff, upon such conditions, as to costs and otherwise, as the court may deem just.

Several petitions may be filed in certain cases.

SEC. 204. When a demurrer to cause fifth is sustained, on motion of the plaintiff the court may allow him to file several petitions, including such several causes of action as have been disjoined; and an action shall be docketed for each petition, and the same shall be proceeded with without further service.

When demurrer is sustained for cause eighth, ninth or tenth.

SEC. 205. When a demurrer is sustained for causes eighth, ninth or tenth, the court shall grant a non suit, except upon motion of the plaintiff, it may be continued to the next term, by his paying costs necessary to correct the error, which cost shall be adjudged by the court, and shall not be added to the list of costs to follow the event of the suit.

Demurrer to one portion and answer to another.

SEC. 206. The demurrer may be to one portion of the petition and the answer to another, or each may apply to the whole.

Answer not to overrate the demurrer.

SEC. 207. In the latter case, the answer shall not be held to overrate the demurrer; but the issue growing out of such pleadings shall be disposed of in their order.

What the answer shall contain.

SEC. 208. The answer shall contain:

First: A general or specific denial of each material allegation of the petition.

Second: A statement of any new matter constituting a defence, counter claim, or set off, in ordinary and concise language and without repetition.

Grounds of defence to be set forth in answer.

SEC. 209. The defendant may set forth in his answer as many grounds of defence as he may have. Each must be separately stated and numbered, and they must contain a denial of each allegation, or must state some sufficient reason for not doing so; allegations not thus responded to, will be taken as true.

Demurrer to answer.

SEC. 210. When the answer contains new matter by way of evidence, counter claim, or setoff, the plaintiff may reply thereto by way of demurrer or otherwise.

Demurrer may allege new matter.

SEC. 211. The plaintiff may allege in reply any new matter not inconsistent with the petition, constituting a defence to such new matter in the answer.

SEC. 212. He may demur to one or more of the defences set up in the answer and reply to the residue.

Allegations not denied.

SEC. 213. When the pleadings show a reason for not admitting or denying a previous allegation, it shall, for the purpose of forming an issue and putting the other party to the proof, be regarded as a denial of the truth thereof.

Defendant may be required to answer under oath.

SEC. 214. The plaintiff, in his petition, may, at his option, require the answer of the defendant to be given under oath; and in like manner, the party filing any subsequent pleading setting forth new matter, may require the reply thereto to be given under oath.

Such pleading considered as testimony.

SEC. 215. Any pleading thus required to be made under oath, shall be considered as evidence in the cause, of equal weight with that of a disinterested witness: *Provided*, it be sworn to by the party himself who was called upon to answer, but not otherwise.

Pleading to be sworn to.

SEC. 216. The pleading thus calling for a reply under oath, must itself be sworn to. If sworn to by any other than himself, he must show that he has reasonable means of information on the subject, and what these means are.

Delays.

SEC. 217. When the reply under oath is to create much delay or inconvenience, the court may require satisfactory evidence (by oath of the party or otherwise) that such sworn reply is important.

Reply must be sworn to by party himself.

SEC. 218. Such reply must be sworn to by the party himself or some one of the parties where there are several, or by some one

showing himself to be possessed of equal information with the party on the subject matter thereof, and that he has authority to make such sworn reply. No pleading verified as above required, can be used in a criminal prosecution against the party, nor can a party be compelled to state facts which if true would subject him to a prosecution for felony.

Supplemental pleading.

SEC. 219. Either party may make a supplemental pleading alleging any material facts which have come to his knowledge since the filing of his former pleading.

Pleading founded on written instruments.

SEC. 220. When a pleading is founded upon a written instrument or account, a copy thereof must be annexed to such pleading, or it will be sufficient ground for a demurrer thereto. A set off is a pleading within the meaning of this section.

Several causes of action may be united in one petition.

SEC. 221. Several causes of action may be united in the same petition, provided they effect all the parties thereto in the same capacities, and if suit on all might be brought in that county. But the court to prevent confusion therein, may direct all or any portion of the issue joined therein, to be tried separately.

What each party may state.

SEC. 222. Each party may state in either of his pleadings, as many different grounds of action or defence as he may think material.

Irrelevant matter may be expunged.

SEC. 223. The court may on motion cause irrelevant, redundant or scandalous matter to be expunged from any pleading.

Amendments.

SEC. 224. No cause shall be continued in consequence of the amendment of any pleading unless, the court is satisfied that substantial justice requires such continuance.

Errors or defects.

SEC. 225. Immaterial variances, errors, or defect, may be disregarded, or the court may direct an amendment without costs.

Allowance of amendments.

SEC. 226. No variance, error, or defect, shall be deemed material, unless the court is satisfied that the objecting party will be prejudiced by disregarding it, or by allowing it to be amended. In such cases, amendments shall be allowed in any stage of the proceedings, upon such terms as the court may deem just.

Court may prescribe terms of amendment.

SEC. 227. The court may allow material amendments at any stage of the proceedings, upon such terms, and subject to such rules as it may prescribe.

When original paper is lost.

SEC. 228. If an original pleading or paper be lost, or withheld by any person, the court may authorize a copy thereof to be filed and used instead of the original.

CHAPTER XXVII.

THE TRIAL AND ITS INCIDENTS.

Calendar of causes.

SEC. 229. The clerk shall keep a calendar of the causes pending in his court, arranging the criminal and civil causes respectively in the order of their commencement, and shall furnish the court and bar, each, with a copy at every term of the court.

Causes tried at first term.

SEC. 230. Except where otherwise provided, causes shall be tried at the first term after they are commenced, unless reasonable cause for a continuance be shown.

Continuances.

SEC. 231. When time is asked for making application for a continuance, the cause shall not lose its place on the calendar, or it may be continued, at the option of the other party and at the cost of the party applying therefor.

When continuances shall not be granted.

SEC. 232. Continuances shall not be granted for any cause growing out of the fault or negligence of the party applying therefor. Subject to this rule, they may be allowed for any cause which satisfies the court that substantial justice will thereby be more nearly obtained.

Affidavit for continuance.

SEC. 233. Motion for a continuance on account of the absence of witnesses, must be founded on the affidavit of the party, his agent or attorney, showing that due diligence has been used to obtain such testimony, also the name and residence of such witness, what particular facts he expects to prove by him, and that he knows of no other witness by whom such facts can be fully proved.

Admission of facts.

SEC. 234. If the opposite party admit the facts as thus stated, the court shall, in its minutes, make a note of such admission, and the cause shall not be continued.

Separate trials.

SEC. 235. A separate trial between the plaintiff and any, or all, of several defendants, may be allowed by the court whenever, in its opinion, justice will be thereby promoted.

Marriage no ground for continuance.

SEC. 236. The marriage of a party is no sufficient ground for a continuance, nor shall a cause be continued on account of the death

of a party, unless the court is also satisfied that further proceedings cannot then take place without causing substantial injury to some of the parties.

Issues of law tried first.

SEC. 237. Issues of law shall first be tried; but by going to trial on an issue of fact, without objection, a party shall be deemed to have waived his demurrer.

Decisions of demurrers.

SEC. 238. Upon the decision of a demurrer, if the unsuccessful party fail to amend or plead, and the same consequences shall ensue as though a verdict had passed against the plaintiff, or the defendant had made default, as the case may be.

SEC. 239. Issues of fact shall be tried by the court, unless one of the parties require a jury.

Jury trials.

SEC. 240. When a jury is required for the trial of any civil case in any of the courts in this Territory, a fee of one dollar for each juror by him required, shall be advanced by him, and shall be taxed in his bill of his costs.

Party to state number of jurors.

SEC. 241. When a jury trial is demanded, the party shall state the number of jurors he demands, which shall not be less than four nor more than twelve, and shall be summoned as heretofore provided for.

Peremptory Challenges.

SEC. 242. The parties may in turn peremptorily challenge as near as may be, one half the number so demanded and the vacancies to be supplied as heretofore prevailed.

Challenges for cause.

SEC. 243. Either party may challenge any juror for cause until an impartial jury is impaneled, and parties may determine the number of a jury by agreement, in which case each party shall advance one half the fees to pay the jury, which shall be taxed as costs.

Struck juries.

SEC. 244. Or when both parties desire it, a struck jury may be ordered, whereupon eighteen persons shall be drawn from the box, and the plaintiff first and the defendant shall strike out one person in turn until each has struck out six, and the remaining six shall try the cause.

Mistakes may be corrected.

SEC. 245. At any time before the cause is finally submitted to the court, (or) jury either party may be permitted by the court to give further testimony to correct an evident oversight or mistake.

Jury examining localities.

SEC. 246. Whenever in the opinion of the court, it is proper that the jury should have a view of the localities connected with the pending controversy, it may order them to be conducted in a body, in the custody of proper officers to the place. And while thus absent, no person must speak to them on any subject connected with the trial, except in a public manner to point out the localities which they have come to examine.

SEC. 247. At any time before the cause is submitted to the jury, they may be permitted to separate under the proper instructions of the court.

Jury kept without food or drink.

SEC. 248. After the cause is submitted to the jury, they must be kept together without drink except water and without food except when otherwise directed by the court.

Proceedings in case of sickness of juror.

SEC. 249. If after the impaneling of the jury, and before verdict, a juror becomes sick, so as to be unable to perform his duty, he may be discharged. In such cases, unless otherwise arranged by consent, the vacancy thus made may be filled, and the trial commenced anew, or the court may in its discretion order the jury to be discharged and a new one impaneled.

Jury to take papers in the case.

SEC. 250. Upon retiring for deliberation, the jury may take with them all papers except depositions which have been received as evidence in the case.

Court to keep open in absence of jury.

SEC. 251. While the jury is absent, the court may adjourn from time to time in respect to other business; but is to be deemed open for every purpose connected with the case submitted to the jury, until a verdict is rendered or the jury discharged.

Sealed verdict.

SEC. 252. When by consent the jury have been permitted to seal their verdict, and separate before it is rendered, such sealing is equivalent to a rendition and recording thereof in open court. The jury shall not be polled nor shall they be permitted to disagree thereto.

General or special verdict.

SEC. 253. In every action for the recovery of money only, or for specific, real or personal property, the jury in their discretion may render a general or special verdict.

Special verdict.

SEC. 254. In all other cases, the court may direct the jury to find a special verdict upon all or any of the issues, or may direct them to return a general verdict upon particular question of fact to be stated in writing.

Jury to assess amount.

SEC. 255. Where an action is for the recovery of money only, the jury shall assess the amount of the recovery.

Verdict entered upon record.

SEC. 256. The verdict shall in all cases be returned in writing and filed with the clerk, and entered upon the record after having been put in form by the court if necessary.

Sufficiency of verdict.

SEC. 257. The verdict shall be sufficient in form if it expresses the intention of the jury.

Charge of the court.

SEC. 258. The charge of the court shall be confined strictly to the matter of law, and shall if desired by either party, be in writing and placed in the hands of the jury.

Instructions.

SEC. 259. The court may in its discretion require any instructions asked by either party, to be committed to writing.

Questions of facts.

SEC. 260. Upon a trial of a question of fact by the court, its decision if requested by either party, shall be given in writing, stating the facts found, and the conclusions founded thereon separately, all of which shall be entered upon the record.

Judge.

SEC. 261. By the consent of the court and parties, any person may be selected to act as judge for the trial of any particular case or question, and while thus acting, he shall possess all the powers of the District Court.

Set-off.

SEC. 262. When a set off is proved, a balance shall be struck between it and the demand established by the plaintiff, for which balance judgment shall be rendered in favor of the party entitled thereto.

Judgments.

SEC. 263. In all other cases judgment shall be rendered in accordance with the law and facts found in either of the modes provided.

Plaintiff may withdraw suit.

SEC. 264. The plaintiff cannot take a non suit without the consent of the defendant after the latter has claimed a set off, but he may on such cases, at any time before the jury retire to consider of their verdict, dismiss his cause of action, leaving the defendant to proceed on his set off or counter claim in the capacity of plaintiff.

Defendant may withdraw setoff.

SEC. 265. The defendant may in like manner withdraw his counter claim at any time before the jury withdraw.

Plaintiff may suffer non suit.

SEC. 266. When there is no counter claim to be considered, the plaintiff may at any time before the jury return with their verdict submit to a non suit at his own costs.

Time of non suit &c.

SEC. 267. If in any of the cases contemplated in the last three sections, the trial is by the court instead of being by a jury, the taking a non suit, the dismissal of a cause of action or the withdrawal of the counter claim therein provided for, may take place at any time before the court is prepared to make its decision on the question of fact but not afterwards.

Exceptions.

SEC. 268. Either party may except to any decision or opinion of the court. If for matters occurring during the trial, the exceptions must be taken and reduced to writing before the verdict is rendered unless otherwise arranged by consent. And where a bill of exception is subsequently filed, such consent shall be presumed unless the contrary is shown by the record.

Exceptions to be in writing.

SEC. 269. Such exceptions must be in writing, but the court may allow such time as may be deemed reasonable to settle and reduce the same to form.

Judge to sign bill of exception.

SEC. 270. If the truth of the case be fairly stated in such bill of exceptions, the judge shall sign the same and it shall thereupon become a part of the record of the case.

Motion made in reasonable time.

SEC. 271. Motions in arrest of judgment or a new trial, must be made within a reasonable time, and at the term of the court at which the trial took place.

Points plainly set forth.

SEC. 272. The party making such motion, shall forthwith furnish the counsel of the opposite party, as well as the court, with a copy of the points upon which he relies, which points must be plainly and particularly set forth.

Affidavit of jury may be used.

SEC. 273. In an application for a new trial, the affidavits of jurors or officers of the court may be taken and used in relation to such application.

Costs.

SEC. 274. Costs shall be recovered by the successful against the losing party. But where the plaintiff is successful as to part of his demands and fail as to others, an equitable apportionment of costs may be made by the court.

Party losing.

SEC. 275. The aggregate amount of costs of the prevailing

party against to (the) losing party shall be added to, and become a part of the judgment.

Costs re-taxed.

SEC. 276. Costs may be re-taxed by the court and the judgment corrected in that respect at any time before it is paid off and satisfied.

SEC. 277. All final adjudications of civil actions are judgments.
Judgments.

SEC. 278. Judgment may be rendered for or against one or more of several plaintiffs or defendants before the case is ripe for decision as to all, where such a course will not unjustly prejudice the interest of other parties.

Action of penal bond.

SEC. 279. In action on penal bonds, the petition must set forth the breaches, and the judgment rendered thereon must be for actual damages only.

Judgment set aside, &c.

SEC. 280. When a judgment is set aside or satisfied by execution or otherwise, the clerk shall enter a memorandum thereof in the column left for that purpose in the judgment docket.

Relief cannot exceed amount claimed.

SEC. 281. The relief granted to the plaintiff, cannot exceed that which he has demanded in his petition. In other respects, the court may grant any relief consistent with the case made.

CHAPTER XXVIII.

JUDGMENT BY CONFESSION.

Judgment entered by clerk.

SEC. 282. A judgment by confession without action may be entered by the clerk of the District Court or by a justice of the peace if within his jurisdiction in the manner hereafter provided.

Confession.

SEC. 283. Such confession can only be for money due or to become due, or to secure a person against contingent liabilities on behalf of the defendant, and must be for a specified sum.

Execution to issue.

SEC. 284. If in the District Court, the clerk shall make an entry of judgment in his court record for the amount thus confessed and costs, and shall issue execution thereon forthwith, unless otherwise stipulated by the defendant in his confession.

Confession before Justice of Peace.

SEC. 285. If in a justice court the justice shall thereupon enter a judgment with costs and issue execution as above directed. If a transcript be filed with the clerk of the district court a copy of the statement must be filed with it.

CHAPTER XXIX.

JUDGMENTS BY DEFAULT.

Failure to answer, cause for default.

SEC. 286. If the defendant fail to file his answer or other pleading by the time prescribed, or if having pleaded, he withdraw his pleading without permission or authority to replead, judgment by default may on motion of the plaintiff be entered against him.

Default in case of service by publication.

SEC. 287. When service has been made by publication only, and no appearance had, default shall not be entered until proof has been made, that a copy of the petition and notice was directed to the defendant through the post office, at his usual place of residence, (stating the place) sufficient time for his appearance, or that such residence is unknown to the plaintiff or his attorney or business agent, and could not with reasonable diligence be ascertained.

Judgment may be set aside for cause.

SEC. 288. If such defendant or any person legally representing him, shall at the next term of the court, after being notified of the judgment and within one year after the rendition thereof, petition the court to set aside such judgment and give security and comply with such conditions as the court may direct, the court may in its discretion open the judgment and permit the defendant to defend against the petition.

Application for setting aside default must be made at same term when entered.

SEC. 289. Default may be set aside on such terms as the court may deem just, but not unless an affidavit of the merits be filed and a reasonable excuse be shown for having made such default or unless application be made therefor at the term on which the default was entered.

Referees.

SEC. 290. When long accounts are to be examined, the court may refer the matter to referees.

Defendant may cross examine witnesses.

SEC. 291. The defendant may appear at the time of the assessment and cross-examine the plaintiff's witnesses, but for no other purposes.

Proceedings in equity.

SEC. 292. When the proceedings are of an equitable character, the court, upon reading the pleadings and proofs and hearing the testimony offered, shall render such judgment as is consistent with the rules heretofore observed in chancery cases.

CHAPTER XXX.

EXECUTIONS.

Attachment for contempt.

SEC. 293. Judgments or orders requiring the payment of money, or the delivery of the possession of property, are to be enforced by execution. Obedience to those requiring the performance of any other act, is to be corrected by attachment for contempt.

Executions may issue into any county.

SEC. 294. Executions from the district court may issue in the first instance into any county which the party ordering them may direct.

Return may be made by mail.

SEC. 295. When sent into any county other than that in which the judgment was rendered, return may be made by mail. But money cannot thus be sent except by the direction of the party entitled thereto or his attorneys.

What the execution must state.

SEC. 296. The execution must intelligibly refer to the judgment, stating the time and place at which it was rendered, the names of the parties thereto, the amount, and the amount still to be collected thereon, if for money, and if not for money, it must state what specific act is required to be performed.

Stock, interests, &c., of defendant may be attached.

SEC. 297. Stocks or interests owned by the defendant in any company, and also debts due him, and property of his in the hands of third persons may be levied upon in the manner provided for attaching the same, and the proceeding by garnishment, shall be the same, as nearly as practicable.

Property exempt from execution.

SEC. 298. Public buildings owned by the Territory, or any county, city, school district, are exempt from execution.

Individual property of stockholders responsible for debt.

SEC. 299. In case no property of debtor corporation is found on which to levy, and if the debtor corporation issues no scrip or evidences of debt, nor assesses a tax as early as practicable, sufficient to pay off the judgment with interests and costs, the individual property of the stockholders shall be responsible for the debt.

What property should be taken.

SEC. 300. The officer shall in all cases select such property, and in such quantities, as will be likely to bring the exact amount required to be raised, as nearly as practicable.

Four weeks notice of sale.

SEC. 301. The sheriff must give four weeks notice of the time and place of selling real property, and two weeks notice in case of personal property.

Notice to be posted; Notice of publication in newspaper.

SEC. 302. Such notice shall be given by being posted up in at least three public places in the county, one of which shall be at the place where the last district court was held. In addition to which, in case of the sale of land property, or where personal property to the amount of two hundred dollars or upwards is to be sold, there shall, if either party make of the sheriff a written request therefor, or if the defendant be a non resident, be two publications of such notice in some newspaper printed in the county, if there be one.

Penalty for violating above section.

SEC. 303. An officer selling without the notice above prescribed, shall forfeit one hundred dollars to the defendant in execution, in addition to the actual damages sustained by either party; but the validity of the sale is not thereby affected.

Hours of sale.

SEC. 304. The sale must be at public auction, between nine o'clock in the forenoon and four in the afternoon.

Postponement of sale.

SEC. 305. When there are no bidders, or when the amount offered is grossly inadequate, or when, from any cause, the sale is prevented from taking place on the day fixed, the sheriff may postpone the sale for not more than three days, without being required to give any further notice thereof; but he shall not make more than two such postponements.

Purchaser failing to pay for property.

SEC. 306. When the purchaser fails to pay the money when demanded, the plaintiff or his attorney may elect to proceed against him for the amount; otherwise, the sheriff shall treat the sale as a nullity, and may sell the property again, on the same day, or after a postponement as above authorized.

Principal to be exhausted before the surety.

SEC. 307. Where, by the endorsement of the clerk upon the writ, it appears that either of the persons against whom it issued is only a surety for some of the others, the sheriff shall, in selling, first exhaust the property of the principal before he sells any of the property of the surety.

Indemnifying bond.

SEC. 308. When the sheriff has doubts as to the defendant's ownership of personal property, he may refuse to levy, or if he has levied, may refuse to sell, and may surrender the property to the claimant, unless the plaintiff will first give him a bond of indemnity to enable him to proceed safely.

Joint property to be released on delivery bond.

SEC. 309. When the personal property is owned jointly by the defendant and another, the sheriff may take it in custody, subject

to be released by a delivery bond, or a bond conditioned to pay the debt, to the value of the defendant's interest in the property levied upon.

Mutual judgment.

SEC. 310. Mutual judgments, the executions on which are in the hands of the same officer, may be set off the one against the other, except that the costs shall not be so setoff, unless the balance of cash actually collected on the larger judgment is sufficient to pay the costs of both judgments, and such costs shall be paid therefrom accordingly.

Certificate to issue to purchaser.

SEC. 311. At the time of the sale, the sheriff shall give to the purchaser a certificate containing a description of the property and the amount of money paid by such purchaser and stating that unless redemption is made within one year thereafter according to law, he or his heirs or assigns will be entitled to a deed for the same.

Defendant may redeem property.

SEC. 312. The defendant may redeem such property at any time within one year, from the day of sale as hereinafter provided, the same being real estate or landed property; and the party redeeming shall pay to the purchaser twenty-five per cent per annum from the day of sale.

Right of redemption.

SEC. 313. For the first six months after such sale, his right to redeem is exclusive, but if no redemption is made by him at the end of that time, any creditor of the defendant, whose demand is a lien upon such real estate, may redeem the same at any time within twelve months from the day of sale.

Creditor may redeem property in certain cases.

SEC. 314. Any creditor whose claim becomes a lien prior to the expiration of the time allowed by law for redemption by creditors may redeem. A mortgagee may only thus redeem before or after the debt secured by the mortgage falls due.

Assignment of certificate.

SEC. 315. A creditor redeeming as above contemplated, is entitled to receive an assignment of the certificate issued by the sheriff to the original purchaser as hereinbefore directed.

Land sold in parcels.

SEC. 316. When the property has been sold in parcels, any distinct portion may be redeemed by itself.

Interest in common.

SEC. 317. When the interests of several tenants in common have been sold on execution, the undivided portion of any or either of them may be redeemed separately.

Right of redemption transferable.

SEC. 318. The rights of a defendant in relation to a redemption, are transferable and the assignee has the like power to redeem.

Deed to issue one year from sale.

SEC. 319. If the defendant or his assignee fail to redeem, the sheriff must at the end of the year, execute a deed to the person who is entitled to the certificate as hereinbefore provided, or to his assignee. If the person so entitled be dead, the deed shall be made to his heirs.

Evidence of purchase.

SEC. 320. The purchaser of real estate at a sale on execution need not place any evidence of his purchase on record, until twenty days after the expiration of the full time of redemption. Up to that time, the publicity of the proceedings is constructive notice of the rights of the purchaser but no longer.

Sheriff's deeds.

SEC. 321. Deeds executed by a sheriff in pursuance of such sales, are presumptive evidence of the regularity of all previous proceedings in the case, and may be given in evidence without preliminary proof.

Purchaser of real estate sold on execution may bring action for trespass.

SEC. 322. When real estate has been sold on executions the purchaser thereof, or any person who has succeeded to his interest, may after his estate becomes absolute, recover damages for injury to the property committed after the sale and before possession is delivered under the conveyance.

Defendant and Plaintiff.

SEC. 323. The term "defendant" as herein used is intended to designate the party against whom, and the term "plaintiff" the party in favor of whom any execution has issued.

Return of execution.

SEC. 324. All executions from the District or Supreme Court, shall be returnable within sixty days from their date; those from justices courts, within thirty days from date.

Execution from Justice and District Courts; Plaintiff may purchase.

SEC. 325. Executions from a justice's court, shall issue against the goods and chattels of the defendant; those which issue from a court of record, shall issue against the goods, chattels, land, and tenements of the defendant. The plaintiff may be a purchaser.

Property exempt from execution.

SEC. 326. The following property shall be exempt from execution:

When the execution is against the head of a family, all the necessary wearing apparel, beds and bedding for the members of the family and the household furniture, and other property to the amount of two hundred dollars to be selected by the defendant in the execution.

Mechanical tools &c., exempt.

SEC. 327. When the execution is against any party other than the head of a family, all necessary wearing apparel, and bedding suitable for the season, together with all necessary mining or mechanical tools necessary to carry on the business or trade in which the defendant is engaged, or by which he makes his living, not to exceed the value of fifty dollars.

CHAPTER XXXI.

ARBITRATIONS.

Controversies may be arbitrated.

SEC. 328. All controversies which might be the subject of civil actions may be submitted to the decision of one or more arbitrators as hereinafter provided.

Parties to enter into written agreement previous to arbitration.

SEC. 329. The parties themselves, or those persons who might lawfully have controlled a civil action in their behalf for the same subject matter, must sign a written agreement, specifying particularly what demands are to be submitted, the names of the arbitrators, and the court by which the judgment on their award is to be rendered, and the time thereof.

Submission may embrace all demands.

SEC. 330. The submission may be of some particular matters or demands, or of all demands which the one party has against the other, of all natural demands on both sides.

Bonds to be given.

SEC. 331. They shall make and execute a good and sufficient bond, payable by either unto the other, to the amount of the matter in controversy, conditioned that they will abide the decision of the arbitrators, and that their award may be entered as a judgment against the losing party, by the court to which the award is to be returned. Said bond shall be acknowledged to be signed by them as their free act and deed.

Arbitration after suit commenced.

SEC. 332. A submission to arbitrators of the subject matter of a suit, may also be made by an order of court upon an agreement of parties after suit is commenced.

Neither party can revoke submission.

SEC. 333. Neither party shall have the power to revoke the submission without the consent of the other.

Presence of party not necessary.

SEC. 334. If either party neglect to appear before the arbitrators after due notice, they may nevertheless proceed to hear and determine the cause upon the evidence which is produced before them.

When award must be reported.

SEC. 335. If the award is not made and reported to the court within the time fixed in the submission, it shall have no legal effect, except upon a recommitment of the matter by the court to which it is reported.

Award must be in writing.

SEC. 336. The award must be in writing, and shall be delivered by one of the arbitrators to the court designated in the agreement, or it may be enclosed and sealed by them and transmitted to the court; the cause shall be entered on the docket, and the court may require actual notice to be given to either party, when it appears necessary or proper, before proceeding to act on the award.

Award may be rejected or recommitted.

SEC. 337. The award may be rejected by the court for any legal reasons, or it may be recommitted to the same or other arbitrators for a re-hearing if so agreed upon by the parties.

Award must be entered on record.

SEC. 338. When the award has been confirmed, it shall be filed and entered on the record, and shall have the same force as judgment upon a verdict by a jury.

Award submitted to District Court.

SEC. 339. If the award be submitted to the district court it shall be enclosed and sealed, and the court shall at the next term thereof, open and act upon the award.

Appeal from an award.

SEC. 340. If an appeal is taken from the judgment entered upon an award, copies of the submission and award, together with all affidavits, shall be returned to the court to which the appeal is taken.

Arbitrators may award cost.

SEC. 341. If there is no provision in the submission respecting costs, arbitrators may award them at their discretion.

Compensation of arbitrators.

SEC. 342. The compensation of the arbitrators shall be two dollars per day for the time actually and necessarily spent unless the court fix a less amount and the fees of the justice of the peace shall be twenty-five cents for making out the agreement of submission (in case he does so) and the like amount for taking and certifying the acknowledgment thereto.

Nothing in this act to control action of court.

SEC. 343. Nothing herein contained shall be construed to effect in any manner the control of the court over the parties, the arbitrators or their award, nor to impair or effect any action upon an award or upon any bond or other engagement to abide an award.

CHAPTER XXXII.

APPEALS.

Notice of appeal to be in writing.

SEC. 344. Any person feeling himself aggrieved by the decrees or decisions of the district court, may take an appeal to the supreme court by serving a notice in writing, to his agent or attorney, and also the clerk of the court in which the proceedings were had, stating the appeal from the judgment or some specific part thereof.

Appeal taken within twenty days.

SEC. 345. The appeal shall be taken and perfected within twenty days from the rendition of the judgment, but the appeal shall in no case stay the execution unless a bond be filed for double the amount conditioned to secure the payment.

Execution to be recalled.

SEC. 346. If the execution has been issued before such appeal is taken, where the bond is filed, the clerk shall recall it.

Judgment may be reversed or affirmed.

SEC. 347. The court may reverse or affirm the judgment or render such judgment as the district court should have done.

Damage not to exceed twelve per cent.

SEC. 348. If the judgment be affirmed, the court shall award the appellee such damages as they may deem just, not exceeding twelve per cent per annum.

Judgment may be remanded to District court.

SEC. 349. If the court affirm the judgment, it may remand the cause to the district court, to be carried into effect or it may issue the necessary process for that purpose to the sheriff of the proper county.

Writ of restitution in certain cases.

SEC. 350. If by the determination of the cause, the appellant is entitled to a restoration of money or property that was taken from him under the judgment below, then either court may award a writ of restoration or execution for the purpose of restoring the property or the value thereof.

Bona fide purchaser not be affected.

SEC. 351. Property acquired by a bona fide purchaser under a judgment reversed, shall not be affected by such reversal.

CHAPTER XXXIII.

INFORMATIONS.

Against whom information may be filed.

SEC. 352. An information may be filed against any person unlawfully holding or exercising any public office or franchise within this Territory, or any corporation created by the laws of this Territory, or when any public officer has done or suffered any

act which works a forfeiture of his office, or when any persons act as a corporation within this Territory, without being authorized by law, or, if incorporated, they do or omit acts which amount to a surrender or forfeiture of their rights and privileges as a corporation, or when any person exercises powers not conferred by law.
By whom.

SEC. 353. Such information may be filed by the district attorney of the proper county whenever he deems it his duty so to do, or when complaint is made under oath.

When filed.

SEC. 354. He must file such information when directed to do so by the Governor, the General Assembly or the District Court.

Of what to consist.

SEC. 355. Such information shall consist of a plain statement of the facts which constitute the grounds of the proceeding, addressed to the court, which shall stand for an original petition.
Statement filed in clerk's office.

SEC. 356. Such statement shall be filed in the clerk's office, and summons issued and served in the same manner as hereinbefore provided for the commencement of actions in the district court.

SEC. 357. The defendant shall appear and answer such information in the usual way, and issue being joined, it shall be tried in the ordinary manner.

Information affecting offices.

SEC. 358. When the defendant is holding an office to which another is claiming the right, the information should set forth the name of such claimant; and the trial must, if practicable, determine the rights of the contesting parties.

When judgment in favor of claimant.

SEC. 359. If judgment be rendered in favor of such claimant, he shall proceed to exercise the functions of the office, after he has qualified as required by law.

Books and papers to be delivered over.

SEC. 360. The court, after such judgment, shall order the defendant to deliver over all books and papers in his custody or under his control, belonging to said office.

Defendants liable to suit for damages.

SEC. 361. When the judgment has been rendered in favor of the claimant, he, at any time within one year thereafter, may bring suit against the defendant and recover the damages he has sustained by reason of the act of the defendant.

Information against several.

SEC. 362. When several persons claim to be entitled to the same office or franchise an information may be filed against all, or any portion thereof, in order to try their respective rights thereto.

Information against officer, corporation &c.

SEC. 363. If the defendant be found guilty of unlawfully holding or exercising any office, franchise, or privilege, or if a corporation to be found to have violated the law by which it holds its existence, or in any other manner to have done acts which amount to a surrender or forfeiture of its privileges, judgment shall be rendered that such defendant be ousted and altogether excluded from such office, franchise or privilege, and also that he pay the costs of the proceeding.

CHAPTER XXXIV.

JUDGMENT LIENS.

Judgments are liens upon real estate.

SEC. 364. Judgments in the supreme court or district court of this Territory, or in the district or circuit court of the United States, if rendered within this Territory, shall be a lien upon the land property owned by the defendant at the time of such rendition, and also upon all he may subsequently acquire, before the expiration of the lien as hereinafter provided.

Lands in county where judgment was given.

SEC. 365. When the lands lie in the county where the judgment was rendered, the lien shall attach from the date of the rendition.

Lands in other counties.

SEC. 366. If the lands lie in any other county, the lien does not attach until an attested copy of the judgment is filed in the office of the clerk of the district court of the county in which the land lies.

Transcript of judgment.

SEC. 367. Such clerk shall, on the filing of a transcript of the judgment in his office, immediately proceed to docket and index the same in the same manner as though rendered in the court of his own county.

Limitation liens.

SEC. 368. The liens above authorized continue in force for the term of five years only from the date of the judgment. *Provided*, abstracts of judgments, mechanics liens and all securities provided for in this statute shall be recorded.

CHAPTER XXXV.

FORECLOSURE OF MORTGAGE.

Petition for foreclosure of mortgages.

SEC. 369. Every mortgage given for the payment of money or for any other purpose, shall be foreclosed by petition filed in the district court of the county where the mortgaged premises are situated, asking a decree of sale.

Proceedings as in debt.

SEC. 370. The holder of any mortgage shall in all cases proceed by such petition as in action for debt, and shall give the same notice to the defendant, and to other parties in interest by way of lien or otherwise, as is required in a civil action for debt.

Right contested.

SEC. 371. The right of the mortgagee to foreclose as well as the amount claimed, may be contested to be due by the defendant or any one having a lien interested in the result of the suit.

Judgment for the amount due.

SEC. 372. If any thing found be due the plaintiff upon a petition filed for a foreclosure of a mortgage, the court shall enter judgment therefor and have power to decree a sale of the mortgaged premises, or such part thereof, as may be sufficient to discharge the amount due on the mortgage and the cost of suit.

Decree.

SEC. 373. The court shall also have power to decree and compel the delivery of the possession of the premises to the purchaser thereof, and to decree and direct the payment by the mortgagor of any balance of the mortgage debt in the case in which such balance is recoverable at law and for that purpose may issue the necessary executions as in the other cases against other property of the mortgagor.

Sale of mortgaged premises.

SEC. 374. All sales of mortgaged premises under a decree of the court, shall be made by the sheriff in the county where the premises are situated.

Sale conducted as other sheriff sales.

SEC. 375. Such sales shall be conducted under the same rules and regulations as sales under execution, and are subject to the same redemption.

Right of redemption.

SEC. 376. The rights of redemption to parties having liens, shall be the same for judgment and sales under a decree upon the foreclosure of a mortgage as under a sale on execution.

Proceedings recorded.

SEC. 377. The writs and proceedings and all the papers for a trial and foreclosure of a mortgage, shall be recorded in full by a clerk of the court.

CHAPTER XXXVI.

EVIDENCE.

Who are competent witnesses.

SEC. 378. Every human being of sufficient capacity to understand the obligation of an oath, is a competent witness in all cases, both civil and criminal, except as otherwise herein declared.

But an indian, a negro, or mulatto or black person shall not be allowed to give testimony in any cause.

Exclusion of testimony.

SEC. 379. Facts which have heretofore caused the exclusion of testimony, may still be shown for the purpose of lessening its credibility.

Incompetent witnesses.

SEC. 380. A person who has a direct, certain, legal interest in the suit is not a competent witness, unless called on for that purpose by the opposite party as hereinafter provided.

Husband and wife not witnesses against each other.

SEC. 381. The husband can in no case be a witness against the wife, nor the wife against the husband except in a criminal proceeding for a crime committed by the one against the other, but they may in all criminal prosecutions be witness for each other. *'Communication made while married shall not be revealed.*

SEC. 382. Neither the husband nor wife can be examined in either case, as to any communication made by the one to the other while married, nor shall they after the marriage relation ceases, be permitted to reveal in testimony, any such communication made while the marriage existed.

Attorneys, physicians, &c., not to disclose communications made in professional capacity.

SEC. 383. No practicing attorney, counsellor, physician, surgeon, minister of the gospel or priest of any denomination, shall be allowed in giving testimony to disclose any confidential communication properly entrusted to him in his professional capacity, and necessary and proper to enable him to discharge the functions of his office according to the usual course of practice or discipline.

Waiving rights.

SEC. 384. The prohibitions in the preceeding sections do not apply to cases where the party in whose favor the respective provisions are enacted, waives the rights thereby conferred.

Official confidence.

SEC. 385. A public officer cannot be examined as to communications made to him in official confidence, when the public interest would suffer by the disclosure.

Civil liability.

SEC. 386. No witness is excused from answering a question upon the mere ground that he would be thereby subject to a civil liability.

Criminal liability.

SEC. 387. But when the matter sought to be elicited would tend to render him criminally liable, or to expose him to public ignominy, he is not compelled to answer, except as provided in the next section.

Previous convictions.

SEC. 388. A witness may be interrogated as to his previous convictions for a felony. But no other proof of such conviction is competent except the record thereof.

Whole conversation may be required when part is given.

SEC. 389. When part of an act, declaration, conversation or writing is given in evidence by one party, the whole on the same subject may be inquired into by the other: thus, when a letter is read, all other letters on the same subject between the same parties may be given. And when a detached act, declaration, conversation or writing in evidence, any other act, declaration or writing which is necessary to make it fully understood, or to explain the same, may also be given in evidence.

Written instrument controls printed.

SEC. 390. When an instrument consists partly of written and partly of printed form, the former controls the latter, when the two are inconsistent.

Terms of agreement to be construed as party understood it.

SEC. 391. When the terms of an agreement have been intended in a different sense by the parties to it, that sense is to prevail against either party in which he had reason to suppose the other understood it.

Presumptive evidence.

SEC. 392. Historical works, books of science or art, and published maps or charts, when made by persons indifferent between the parties, are presumptive evidence of facts of general notoriety or interest.

Execution of instrument.

SEC. 393. When a subscribing witness denies, or does not recollect, the execution of the instrument to which his name is subscribed as such witness, its execution may be proved by other evidence.

Identifying hand writing.

SEC. 394. Evidence respecting hand writing may be given by comparisons, made by experts or by the jury, with writings of the same person which are proved to be genuine.

Entries of persons deceased, presumptive evidence of fact.

SEC. 395. The entries and other writings of a person deceased, made at or near the time of the transaction, and in a position to know the facts therein stated, are presumptive evidence of such facts when the entry was made against the interest of the person so making it, or, when made in a professional capacity, or in the ordinary course of professional conduct, or when made in the performance of a duty specially enjoined by law.

Books of account receivable in evidence; What must be shown.

SEC. 396. Books of account containing charges by one party against the other, made in the ordinary course of business, are

receivable in evidence only under the following circumstances, subject to all just exceptions as to their credibility:

First: The books must show a continuous dealing with persons generally, or several items of charges at different times, against the other party, in the same book.

Second: It must be shown by the parties, under oath or otherwise, that they are his books of original entries.

Third: It must be shown in like manner that the charges were made at or near the time of the transaction therein entered, unless satisfactory reasons appear for not making such proof.

Fourth: The charges must also be verified by the party or the clerk who made the entries, to the effect that they believe them just and true, or a sufficient reason must be given why verification is not made.

Private writing received in evidence.

SEC. 397. Every private writing, except a last will and testament, after being acknowledged or proved, and certified in the manner prescribed for the proof or acknowledgment of conveyances of real property, may be read in evidence, without further proof.

Judge of court a competent witness.

SEC. 398. The judge of the court is a competent witness for either party, and may be sworn upon the trial. But in such a case, it is in his discretion to order the trial to be postponed or suspended, and to take place before another judge.

Protest considered proof.

SEC. 399. The usual protest by a notary public, without proof of his signature or notarial seal, is evidence of the dishonor and notice of a bill of exchange or promissory note.

CHAPTER XXXVII.

DOCUMENTARY EVIDENCE.

Publication proved by affidavit.

SEC. 400. Publications required by law to be made in a newspaper, may be proved by affidavit of any person having knowledge of the fact, specifying the time when, and the paper in which, the publication was made; but such affidavit must, for the purposes now contemplated, be made within six months after the last day of publication.

Posting of service proved in same manner.

SEC. 401. The posting up or service of any notice or other paper required by law, may be proved by the affidavit of any competent witness, attached to a copy of said notice or paper, and made within six months of the time of such posting up.

Certified copies of records.

SEC. 402. Duly certified copies of all records and entries or papers belonging to any public officer, or by authority of law, filed to be kept therein, shall be evidence in all cases, of equal credibility with the original record or paper so filed.

Any person entitled to receive copy of record.

SEC. 403. Every officer having the custody of a public record or writing, is bound to give any person, on demand, a certified copy thereof, on payment of the legal fees therefor.

Certificate of public officer same as an oath.

SEC. 404. The certificate of a public officer that he has made diligent and ineffectual search for a paper in his office, is of the same efficacy in all cases as if such officer had personally appeared and sworn to the facts.

Signature of an officer presumed genuine.

SEC. 405. In the cases contemplated in the last two sections, the signature of the officer shall be presumed to be genuine until the contrary is shown.

CHAPTER XXXVIII.

HOW TESTIMONY IS TO BE PROCURED.

Subpoena—what they must require.

SEC. 406. A subpoena is the proper way to bring a witness into court. It must require the witness to be present at a prescribed time and place to give testimony in a case therein stated. It may also require him to bring with him any book, document, or other writing under his control and which he is not excused by law from producing in evidence.

Compelling of attendance.

SEC. 407. Witnesses in civil cases cannot be compelled to attend court out of the county where they are served, nor at a distance of more than twenty miles from the place of the residence or from that where they are served with a subpoena unless within the same county.

Witnesses may demand fees in advance.

SEC. 408. Witnesses are entitled to receive (in advance if demanded) their traveling fees to and from the court together with their fees for one day's attendance. At the commencement of each day after the first, they are further entitled on demand to receive the legal fees for that day in advance. If not thus paid they are not compelled to attend or remain as witnesses.

Failure to obey subpoena.

SEC. 409. For failure to obey a valid subpoena without a sufficient cause or excuse, or for a refusal to testify after appearance, the delinquent is guilty of a contempt of court. He is also liable to the party by whom he was subpoenaed for all consequence of

such delinquency, together with fifty dollars additional damages, and may be under such rules as the court may prescribe.

Papers or books may be required.

SEC. 410. The supreme or district court may by rule require the production of any papers or books which are material to the just determination of any cause pending before it for the purpose of being inspected and copied by or for the party thus calling for them.

Facts expected to be proved by books must be stated.

SEC. 411. The petition for that purpose must state the facts expected to be proved by such books or papers, and that as the petition believes such books and papers are under the control of the party against whom the rule is sought and must show wherein they are material. The rule shall therefore be granted to produce the books and papers or show cause to the contrary if the court deem such rule expedient and proper.

Contempts.

SEC. 412. On failing to obey the rule or show sufficient cause for such failure, the same consequences shall ensue as if the party had failed to appear and testify when subpoenaed by the party now calling for books and papers.

SEC. 412 [413]. Though a writing called for by one party is by the other produced, the party thus calling for it is not obliged to use it as evidence in the cause.

CHAPTER XXXIX.

DEPOSITIONS.

When depositions may be taken and used.

SEC. 414. After the commencement of a civil action or after an issue is founded in any other civil proceeding, if a witness resides out of or within the Territory but within a different county from the place of trial, or is about to go beyond the reach of a subpoena or is for any other cause expected to be unable to attend court at the time of trial, the party wishing his testimony may whenever he judges expedient take his deposition in writing, before any person having authority to administer oaths.

Notice.

SEC. 415. Reasonable notice of the time and place, when and where the same will be taken, must be given to the opposite party.

Manner of taking depositions.

SEC. 416. The person before whom any of the depositions above contemplated are taken, must cause the interrogatories propounded (whether written or oral) to be written out and the answers thereto to be inserted immediately underneath the respective questions. The answers must be in the language as near as practicable of the witness, if either party requires it.

The whole being read over by or to the witness, must be given him subscribed and sworn to in the usual manner.

Exhibits appended to depositions.

SEC. 417. All exhibits produced before the person taking the deposition, or proved or referred to by any witness or correct copies thereof, must be appended to the deposition and returned with them unless sufficient reason be shown for not so doing.

Depositions certified to by officer before whom taken, and sealed up and sent to the clerk.

SEC. 418. The person taking the deposition shall attach his certificate thereto, stating that it was subscribed and sworn to by the deponent, at the time and place therein mentioned. The whole including the commission and interrogatories (when any such were issued) must then be sealed up and returned to the clerk of the proper county by mail, or to the court where the trial is pending unless some other mode be agreed upon between the parties.

Opened by clerk.

SEC. 419. The depositions when thus returned must be opened by the clerk, and placed on file in his office, and may be read in evidence.

Deviations.

SEC. 420. Unimportant deviations from any of the above directions, shall not cause the depositions to be excluded where no substantial prejudice could be wrought to the opposite party by such deviation.

Officers verification.

SEC. 421. When depositions are directed to be taken before a judge or justice of the peace, merely by his name of office, the return must contain an authentication by the clerk of the proper court, under his seal of office, verifying the fact that the person who took the deposition is really such officer.

Excluding depositions.

SEC. 422. All motions to exclude depositions must be made before the commencement of the trial, or objections to their introduction will be deemed to be waived.

CHAPTER XL.

WRITS FOR SPECIAL RELIEF.

Mandamus.

District court to issue writ of mandamus.

SEC. 423. The writ of mandamus issues from the District Court to any inferior tribunal, corporation, board, or officer of this Territory, or person to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station.

Discretion of inferior tribunal.

SEC. 424. Where a discretion is left to an inferior tribunal, the writ of mandamus can compel him (it) to act, it cannot control the discretion of the inferior tribunal.

Writ issued by supreme court.

SEC. 425. The writ may also be issued by the Supreme Court to any District Court if necessary, and also in any other case when it is found necessary to enable it to exercise its legitimate powers.

SEC. 426. It ought not to be issued in any case where there is a plain, speedy and adequate remedy in the ordinary course of the law.

Oath required.

SEC. 427. It is issued on the information under oath of the party beneficially interested and is alternative or peremptory.

What writ requires.

SEC. 428. The alternative writ commands the defendant to do the act required to be performed, or show cause before the court forthwith or at a specified time and place why he has not done so, and that he then and there return the writ.

SEC. 429. The peremptory writs omit the words which require the defendant to show cause why he has not done as commanded.

Mode of obtaining writ, &c.

SEC. 430. The mode of obtaining the writ, the service, and proof thereof, the return and enforcement thereto, must be in the same manner as in case of the writ of certiorari.

Answer of alternative writ.

SEC. 431. On the return day of the alternative writ, or on such farther day as the court may allow the party on whom the writ has been served, may show cause by a sworn answer made in the same manner as an answer to a petition in a civil action, and issue may be made thereon and tried accordingly.

Default.

SEC. 432. If the defendant make default or judgment after answer be moved against him a peremptory mandamus issues forthwith. The subject of costs is regulated upon the same principles as in ordinary civil actions.

CHAPTER XLI.

NUISANCE WASTE AND TRESPASS.

Nuisance.

SEC. 433. An action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by any nuisance.

Abatement thereof.

SEC. 434. When a proper case is made, the nuisance may be enjoined or abated, and damages recovered therefor.

Forfeiture and eviction.

SEC. 435. Judgment of forfeiture and eviction may be rendered against the defendant whenever the amount of damages so recovered is more than two thirds the value of the interest such defendant has in the property wasted, and when the action is brought by the person entitled to the reversion.

Prevention of waste.

SEC. 436. Any person whose duty it is to prevent waste and who has not used reasonable care, and diligence to prevent it, is deemed to have committed it.

Suit for trespass.

SEC. 437. Any person who wilfully and with intent to injure another by entering the *close* of his constructive possessions, or by injuring any tree, shrub or timber, on the land of another, or in the street or highway, in front of another's grounds, yard, or town lot, the perpetrator shall pay treble damages at the suit of any person entitled to protect or enjoy the property aforesaid.

Just value only to be recovered in certain cases.

SEC. 438. Nothing herein contained authorizes the recovery of more than the just value of timber taken from uncultivated wood land, for the repair of a public highway or bridge upon the land in its immediate neighborhood, or for making a ditch and taking water for irrigation purposes as provided by law.

Treble damages.

SEC. 439. If any person enter upon the land property of another, and do any act, or exercise any authority or privileges to the injury of such other person or his property, he shall be guilty of trespass, and shall pay treble damages at the suit of such person, to be recovered in civil action before any court of proper jurisdiction.

When suit for trespass is sent to higher court.

SEC. 440. If, in the progress of any trial upon an action of trespass before a justice of the peace, a plea of title is entered, the justice shall certify a copy of his docket entries, and all papers connected with the cause, to the clerk of the district court, who shall enter the same upon his docket for trial at the next term; provided, that five days intervene between the day on which the justice made such certificate and the day of the sitting of the court.

CHAPTER XLII.

ACTIONS FOR THE RECOVERY OF REAL PROPERTY.

Who may recover.

SEC. 441. Any person having a valid subsisting interest in real property, and a right to the immediate possession thereof, may recover the same by action, which may be brought against any person acting as owner, landlord or tenant of the property claimed.

SEC. 442. Whenever it appears that the defendant is only a tenant, the landlord may be substituted, reasonable notice thereof being given him.

Service upon agent.

SEC. 443. When the defendant is a non resident, having an agent for the property in the Territory, service may be made upon such agent in the same manner, and with the like effect, as though made on the principal.

The affidavit.

SEC. 444. The plaintiff, in his petition, shall state that he is entitled to the possession of the premises, particularly describing them, the interest he claims thereon, and that the defendant unlawfully keeps him out of possession.

Defendant's answer.

SEC. 445. The answer of the defendant must set forth under what claim of right (if any) he holds possession; and if as mere tenant, the name and residence of his landlord must be given.

Continuances.

SEC. 446. The court may grant continuances in cases of this nature for reasons of less importance than those required to be set forth in ordinary civil actions.

Defense.

SEC. 447. When the defendant makes defense, it is not necessary to prove him in possession of the premises.

Limitation of action.

SEC. 448. The plaintiff cannot recover for the use and occupation of the premises for more than six years prior to the commencement of the action.

Writ of possession.

SEC. 449. When the plaintiff shows himself entitled to the immediate possession of the premises, judgment shall be entered, and a writ of possession issued accordingly.

New trial.

SEC. 450. The court, in its discretion, may grant a new trial on the application of an interested party or those claiming under him, made at any time within two years after the determination of the former trial.

Proceedings on new trial.

SEC. 451. But the party who, on such a new trial, shows himself entitled to lands which have thus passed to a *bona fide* purchaser, may recover the proper amount of damages against the other party either in the same or subsequent action.

Writ of restitution.

SEC. 452. The party who has been successful in such new trial, shall, if the case require it, have his writ of restitution to restore to him his property.

Action against tenant.

SEC. 453. In an action against a tenant, the judgment shall be conclusive against the landlord, who has received notice as hereinbefore provided.

When landlord not notified.

SEC. 454. If not notified, he shall be regarded as a defendant who has not been served with the original summons, and shall be treated accordingly.

SEC. 455. The plaintiff must recover on the strength of his own title.

Exemplary damages.

SEC. 456. In case of wanton aggression on the part of the defendant, the jury may award exemplary damages.

Costs and damages to follow judgment.

SEC. 457. If the execution be for the delivery of the possession of land property, it shall require the officer to deliver the same, particularly describing the property to the party entitled thereto, and may at the same time require the officer to satisfy any costs or damages recovered in the same judgment out of the goods and chattels of the party against whom it was rendered, and for want of such goods and chattels, then out of the lands and tenements; and in this respect it shall be deemed an execution against the property.

CHAPTER XLIII.

FORCIBLE ENTRY OR DETENTION OF LAND PROPERTY.

When suits for forcible entry and detention may be maintained.

SEC. 458. A summary remedy under this proceeding is allowable:

First: Where the defendant has by force or intimidation or fraud or stealth, entered upon the prior, actual, possession of another in regard to real property and detain the same.

Second: Where a lessee holds over after the termination or contrary to the terms of his lease.

Third: Where the defendant continues in the possession after a sale by foreclosure of mortgage, or on execution unless he claims by a title paramount to the lien, by virtue of which the sale was made, or by title derived from the purchaser at the sale.

Non-payment of rent no cause of action.

SEC. 459. The mere non payment of rent by the time stipulated in the lease, does not enable a plaintiff to resort to this action, unless expressly so stipulated in the lease.

SEC. 460. The legal representative of the person who might have been plaintiff if alive, may bring this suit after his death.

Notice to quit.

SEC. 461. Before suit can be brought in any except the first

of the above classes, three days notice to quit must be given to the defendant in writing.

Petition.

SEC. 462. The petition must be in writing and sworn to.

Suit in district or county where premises are located.

SEC. 463. The proceedings must be had in the District Court of the proper county or before a justice of the peace of the precinct where the premises are situated, or if there is no justice therein able or qualified to act, they may be brought before some justice in any adjoining precinct. They shall be governed by the same rules as other cases before justices of the peace, except as herein modified.

Two to six days notice.

SEC. 464. The time for appearance and pleading must be not less than two nor more than six days from the time the notice is served on the defendant.

Adjournment not more than ten days.

SEC. 365. No adjournment shall be made for more than ten days, nor to any other place except by consent of parties.

Judgment against defendant to be executed immediately.

SEC. 466. If the defendant is found guilty, judgment shall be entered that he be removed from the premises, and that the plaintiff be put in possession thereof and a warrant of removal shall issue accordingly, to which shall be added a clause commanding the officer to levy the costs as in ordinary cases.

Question of title not to be investigated.

SEC. 467. The question of title cannot be investigated in this action. And nothing herein contained prevents a party from suing for a trespass or from testing the right of property in any other manner.

No set off.

SEC. 468. An action of this kind cannot be brought in connection with any other, nor can it be made the subject of set off.

Warrant executed in day time.

SEC. 469. The warrant for removal can be executed only in the day time.

Appeal suspends execution.

SEC. 470. An appeal taken in the usual way if the proper security is given suspends the execution for costs, and may with the consent of the plaintiff prevent the warrant of removal from being executed but not otherwise.

Warrant of removal.

SEC. 471. The District Court on the trial of the appeal, may issue a warrant of removal or restitution as the case may require.

CHAPTER XLIV.

INJUNCTIONS AND ORDERS.

Injunctions.

SEC. 472. An injunction may be granted as an independent or auxiliary means of relief by the district court, or any judge of the supreme or district court.

Auxiliary questions.

SEC. 473. When it is a mere auxiliary measure during the trial of a principal cause, the terms on which it is granted, and the kind of notice to be given to the opposite party, shall be such as the court or judge prescribes.

Effect of an injunction.

SEC. 474. When it is an independent means of relief, the petition for the allowance of the injunction must be sworn to, and the plaintiff must execute a good and sufficient bond, with sureties, and a penalty, to be approved by the court, and doubly sufficient to cover any probable amount to be thereby incurred, conditioned for the payment of all the damages which may be adjudged against the petitioner, by reason of the issue of said injunction, and that he will pay any judgment which may be ultimately recovered by the opposite party.

Injunction allowed in open court or vacation.

SEC. 475. If the allowance of an injunction is made in open court, the clerk shall make the entry of the order for the issue of the writ; but if made in vacation, the judge must endorse such order on the petition, and send it to the clerk.

Civil action.

SEC. 476. When the proceedings in a civil action are sought to be enjoined, the suit must be brought in the county wherein the suit is pending.

Bond.

SEC. 477. Upon the filing of the bond as required, the clerk must issue the writ of injunction as directed by the order of allowance.

Defendant can show cause why injunction should not be granted.

SEC. 478. The court or judge, before granting the writ, may, if deemed advisable, allow the defendant an opportunity to show cause why such order should not be granted.

When defendant does not show cause.

SEC. 479. If the writ is granted without allowing the defendant to show cause, he may, at any time before the next term of the court, apply to the judge who made the order, to vacate or modify the same.

Application must be accompanied with notice.

SEC. 480. Such application must be with notice to the plaintiff, and may rest upon the ground that the order was improperly

granted, or it may be founded upon affidavits on the part of the defendant. In the latter case, the plaintiff may fortify his application by counter affidavits, and have reasonable time therefor.

Decision at once violation of injunction.

SEC. 481. The judge may thereupon decide the matter at once, unless some good cause for delay be shown. But the vacation of the order shall not prevent the cause proceeding, if any thing be left to proceed upon.

Violation of injunction.

SEC. 482. Any Judge of the Supreme or District Court, being furnished with an authenticated copy of the writ of injunction, and also with satisfactory proof that such injunction has been violated, shall issue his precept to the Sheriff of the county where the violation of the injunction occurred or to any other sheriff (naming him) more convenient to all parties concerned, directing him to attach said defendant and bring him forthwith before the same or some other judge at a place to be stated in said precept.

Excusing contempt.

SEC. 483. If, when thus produced, he files his affidavit denying or sufficiently excusing the contempt charged, he shall be released and the affidavit shall be filed with the clerk of the court for preservation.

Bond for appearance.

SEC. 484. But if he fail to do so the judge may require him to give bond with surety for his appearance at the next term of the court and also for his future obedience to the injunction, which bond shall be filed with the clerk.

Failure to give security.

SEC. 485. If he fail to give such surety, he may be committed to the jail of the county where the proceedings are pending, until the next term of the court.

Punishment of contempt.

SEC. 486. If the security be given, the court at the next term shall act upon the case, and punish the contempt in the usual mode.

Dissolving injunction.

SEC. 487. The defendant may move to dissolve such injunction either before or after the filing of the answer.

Issue.

SEC. 488. Issue may be joined on the defendant's answer and a trial had, as in other cases.

Trial.

SEC. 489. When practicable, the whole matter connected with the injunction, shall be disposed of on such trial, and complete justice administered to all parties.

Damages.

SEC. 490. If the injunction be dissolved in whole or in part,

damages may be awarded against the obligors of the bond, which shall be assessed by a judge when required by either party.

Order in vacation.

SEC. 491. For good cause shown, a judge's order may issue in vacation, directing any of the officers of the court in relation to the discharge of their duties.

Order in force during vacation.

SEC. 492. Such order shall be in force only during the vacation in which it is granted, and for the first two days of the ensuing term.

Bond.

SEC. 493. The judge granting it may require the filing of a bond, as in case of an injunction, unless from the nature of the case, such requirement would be clearly unnecessary and improper.

CHAPTER XLV.

WRIT OF CERTIORARI.

Writ authorised.

SEC. 494. The writ of certiorari may be granted whenever specially authorized by law, and also in all cases where an inferior tribunal, board, or officer, exercising official functions, is alleged to have exceeded their proper jurisdiction, or is otherwise acting illegally, when in the judgment of the court applied to for the writ, there is no other plain, speedy, and adequate remedy.

Writ granted by supreme or district court.

SEC. 495. The writ may be granted by the district court of the proper county, but if to be directed to a district court or the judge thereof, then by the Supreme Court, and shall command the defendant therein to certify fully to the court from which the same issued, at a specified time and place, a transcript of the records and proceedings as well as the facts of the case (describing or referring to them, or any of them, with convenient certainty,) and also to have then and there the writ.

Stay of proceedings.

SEC. 496. If a stay of proceedings is sought, the court may require a bond, and may fix the penalty and conditions thereof.

Affidavit for this writ.

SEC. 497. The motion for this writ must be made on affidavit, and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause, or may in its discretion grant the writ without notice.

Proof of service.

SEC. 498. The writ must be served and the proof of such service made in the same manner as is prescribed for the original notice in a civil action.

Defective return.

SEC. 499. If the return to the writ be defective, the court may order a further return to be made, and may compel obedience to the writ, and to such further order by attachment if necessary.

Hearing the parties.

SEC. 500. When a full return has been made, the court must proceed to hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment affirming or annulling the proceedings below, or in its discretion correcting those proceedings, and prescribing the manner in which the defendant shall proceed farther in the matter.

Appeal.

SEC. 501. From the decision of the District Court, an appeal lies to the Supreme Court, as in other cases.

CHAPTER XLVI.

MISCELLANEOUS PROVISIONS.

Time an act is to be done.

SEC. 502. The time within which an Act is to be done, as herein provided, shall be computed by excluding the first day and including the last; if the last day may be Sunday, it shall be excluded.

Costs paid by losing party.

SEC. 503. The costs of suits shall be paid by the losing party, except when especially provided otherwise by law, or by order of the court.

Costs of motion &c., to be paid as court directs.

SEC. 504. The costs of motions, continuances, amendments, and the like, shall be taxed and paid as the court in its discretion may direct, unless otherwise provided by law.

Service of notices.

SEC. 505. When not otherwise provided, notices required by law must be in writing, and served as herein provided; and the notice of such service, sworn to on the back of the instrument, shall be sufficient and perpetual evidence of such service; but the return or proof of such service must show particularly the manner in which it was made.

Notice to agent.

SEC. 506. The service may be upon the party, or his agent or attorney, after a suit has been commenced.

Court may appoint some person to perform a special service.

SEC. 507. Any court may, in writing, specially depute any discreet person of suitable age, to perform any particular duty properly devolving upon any executive officer, provided the court enter the order of appointment upon the instrument to be executed.

Such person has the powers of a constable or sheriff for that particular purpose, and is subject to the same obligations.

Civil remedies.

SEC. 508. The right of civil remedy is not merged in a public offence; but may in all cases be enforced independently of, and in addition to, the punishment of the latter.

Laws strictly construed.

SEC. 509. The rule that laws in derogation of the common law are to be strictly construed, has no application to this statute, but shall receive a liberal construction in order to carry out its general purposes, objects and equity.

Security by a bond.

SEC. 510. When security is required by law to be given, and no particular mode is prescribed, it shall be by bond.

To whom bond must be given.

SEC. 511. Such security, when not otherwise directed, may, if for the benefit of individuals, be given to the party intended to be thereby secured. If in relation to public matters, concerning a county or part of a county, it may be made payable to the county; if concerning the inhabitants of more than one county, it may be made payable to the Territory; but a mere mistake in these respects, will not vitiate the security.

Rules in civil actions.

SEC. 512. The rules of proceeding prescribed for civil actions proper in the district court, shall be followed in all proceedings of a special character, whether before the district court or other tribunals, so far as they are applicable and not otherwise regulated.

Liabilities of officers.

SEC. 513. No officer of this Territory shall be liable to contempt or damages for the non performance of any duty which is in favor of, or to benefit, any individual, or a corporation or company. *Provided*, he has not been tendered or paid in full his legal fees for such services.

CHAPTER XLVII.

THE ESTATES OF DECEDENTS.

County courts to take probate of wills, &c.

SEC. 514. The county court has power to take probate of wills to grant administration of the estates of all persons who at the time of their death were residents of the county, or who die non residents of the Territory, having property to be administered upon within the county, or where such property is afterwards brought into the county and it has jurisdiction in all matters relating to the settlement of such estates.

May also appoint guardian.

SEC. 415. It may also appoint guardians for minors and others

requiring guardians residing within the county in cases prescribed by law, and may exercise a general supervision over their property, person and interests.

Case within jurisdiction of two or more counties.

SEC. 516. When a case is originally within the jurisdiction of the courts of either two or more counties, that court which first takes cognizance thereof by commencement of proceedings can retain the same throughout.

Process may be revoked.

SEC. 517. Any process or authority emanating from the court in probate matters, may for good cause be revoked and a new one issued.

CHAPTER XLVIII.

WILLS.

What property devised.

SEC. 518. Property to be subsequently acquired, may also be devised when the intention is clear and explicit.

Subscribing witness to have no interest in will.

SEC. 519. No subscribing witness to any will can derive any benefit therefrom, unless there be two disinterested and competent witnesses to the same.

SEC. 520. But if without a will, he would be entitled to any portion of the testator's estate, he may still receive such portion to the extent in value of the amount devised.

Posthumous children.

SEC. 521. Posthumous children unprovided for by the father's will, shall inherit the same interest as though no will had been made.

Amount taken ratably.

SEC. 522. The amount thus allowed to a posthumous child, as well as that of any other claim, which it becomes necessary to satisfy in disregard of or in opposition to the contemplation of the will, must be taken ratably from the interests of heirs, devisees and legatees.

The word devisee to embrace legatees.

SEC. 523. The word "devisee," as used in this title shall when applicable, be construed to embrace "legatees," and the word "devised," shall in like causes be understood as comprising the force of the word "bequeathed."

Heirs of devisee to inherit in case of his death.

SEC. 524. If a devisee die before the testator, his heirs shall inherit the amount so devised to him, unless from the term of the will a contrary intent is manifest.

Wills may be filed with clerk of the court.

SEC. 525. Wills duly sealed up and endorsed may be deposited with the clerk of the court, whose duty it is to file and preserve

the same until the death of the testator, unless they themselves sooner demand them.

Will to be brought into open court.

SEC. 526. Any person having the custody of a will, shall at the first stated term of the court, after being informed of the death of the testator, bring the same into open court or before the clerk in vacation if notified so to do, when it shall be publicly read.

Failure to produce will.

SEC. 527. If he fail to do so after receiving reasonable notice, he may be brought in by rule and attachment, and committed to jail until he complies, and shall be further liable to any person aggrieved for all the damages sustained by such failure.

Proving of will.

SEC. 528. After being thus produced and read, a day shall be fixed by the court or clerk for proving the same, which may be postponed from time to time, at the discretion of the court or clerk.

Notice to be given.

SEC. 529. Such notice thereof as the court or clerk directs, shall be immediately given to all persons interested in the matter.

Will recorded.

SEC. 530. After being proved and allowed by the county court or clerk in vacation, the will together with the certificate herein-after required, shall be recorded in a book kept for that purpose.

Wills proved and allowed in other State, may be used in this Territory.

SEC. 531. Wills proved and allowed in any other State, Territory, or County, shall be allowed and recorded in any county in this Territory in which it may be desired to use them, upon a production of a copy thereof to the proper county court, duly authenticated by the attestation of the clerk of the court in which such will was proved, together with the certificate of the judge or presiding officer, that such attestation is in due form of law. If there be no clerk, such attestation may be made by the judge or presiding officer, and in all cases, if the clerk or officer making such attestation have a seal of office, such seal shall be annexed to the attestation.

Allowance of will conclusive of its execution.

SEC. 532. Wills shall not be carried into effect unless thus allowed, and such allowance is conclusive as to the due execution of the will, unless set aside by an original or appellate proceeding in the district court.

Proceedings after proof of will.

SEC. 533. When proved and recorded, the court shall direct the will, or an authenticated copy thereof, to be placed in the hands of the executor therein named or otherwise duly appointed.

Executors.

SEC. 534. If no executors are named therein or if the executors named fail to qualify and act, it shall be retained on file until an executor is appointed and qualified in the manner herein prescribed. *Certificate of proof indorsed on will.*

SEC. 535. Wills, when proved and allowed, shall have a certificate thereof indorsed or annexed thereto, signed by the clerk and attested by the seal of the court; and every will so certified, or the record thereof, or a transcript of such record, duly authenticated, may be read in evidence in all courts within this Territory, without further proof.

Land property.

SEC. 536. After the probate of any will which conveys or disposes of any land property, or any interest in claims upon lands or town lots, the executor of such will shall cause the same to be recorded in the office of the recorder of the county in which such property is situated.

CHAPTER XLIX.

EXECUTIONS. [EXECUTORS].

Definition of executor.

SEC. 537. The word "executor," as used in this title, is intended to be applied to the persons who administer upon the estate of one deceased, whether appointed by the will or otherwise.

Appointment of executor.

SEC. 538. They may in each case consist of one or more, and if not designated by will, they may be appointed by the proper county court as hereinafter directed.

Vacancies.

SEC. 539. If a person appointed executor refuse to accept the trust, or if, when duly notified of his appointment, he neglects to appear within ten days and give bond as hereinafter prescribed, a vacancy will be deemed to have occurred.

Female executors.

SEC. 540. A married woman may act as executor, independent of her husband. Her marriage subsequent to the appointment does not render it invalid.

Minor cannot act.

SEC. 541. If a minor under eighteen years of age is appointed an executor, there is a temporary vacancy as to him until he becomes of that age.

Removal.

SEC. 542. The court for good cause may remove an executor.

Substitute.

SEC. 543. In case of vacancy, the court may appoint a substi-

tute, or it may allow the other executor (if there is another) to proceed by himself in administering the estate.

Substitution not to delay; Administration of estates.

SEC. 544. The substitution of the executors shall occasion no delay in the administration of the estate.

The periods hereinafter mentioned, within which, acts are to be performed after the appointment of executors, shall all, unless otherwise declared, be reckoned from the issuing of the commission to the first general executor.

Administration of nonresident's estate.

SEC. 545. If administration of the estate of a deceased non resident has been granted in accordance with the laws of the Territory, State, or County, where he resided at the time of his death, the person to whom it has been committed may upon his application, and upon qualifying himself in the same manner as is required of other executors, be appointed an executor to administer upon the property of the deceased in this Territory, unless another executor has previously been appointed in this Territory.

Original letters testamentary.

SEC. 546. The original letters testamentary or of administration, or other authority conferring his power upon such executor or an attested copy thereof, together with a copy of the will if there be one attested as hereinbefore directed, must be filed in the office of the clerk of the proper county court before such appointment can be made.

To whom letters shall be granted.

SEC. 547. In other cases where an executor is not appointed by will, administration shall be granted,

First: To the wife of the deceased;

Second: To his next of kin;

Third: To his creditors;

Fourth: To any other person whom the court may select.

Court to appoint.

SEC. 548. The court may unite individuals belonging to the same or different classes as executor when it deems such a course expedient.

Ten days time allowed.

SEC. 549. To each of the above classes in succession, a period of ten days, commencing with the burial of the deceased, is allowed within which to apply for administration on the estate.

Suitable person to be appointed.

SEC. 550. The court must appoint no person an executor who is manifestly unsuitable for the discharge of the trust, nor who is a minor except as herein otherwise provided.

Of the persons appointed.

SEC. 551. If the persons of each class as above ordered, respectively fail to apply for such administration within the ten days

above allotted to his class without sufficient cause being shown for such failure, or if for any reason, all those who apply are improper persons to receive the appointment, the right of administration descends to the next following class.

Executor must give bonds.

SEC. 552. Every executor except as is herein otherwise declared, before entering upon the discharge of his duty, must give bond in such penalty as the judge or clerk of the court approves. conditioned for the faithful discharge of the duties imposed on him by law according to the best of his abilities.

Must also subscribe an oath.

SEC. 553. He must also take and subscribe an oath the same in substance as the condition of the bond aforesaid, which oath and bond must be filed with the clerk of the court.

New bonds may be required.

SEC. 552. New bonds may be required by the court to be given, and in a new penalty, and with new sureties, whenever the same is deemed expedient.

Commission to issue.

SEC. 555. After the filing of the bond and oath aforesaid, the court or clerk shall issue a commission under its seal, giving the executor the powers authorized by law.

Limitation of letters.

SEC. 556. Administration shall not be originally granted after the lapse of five years from the death of the decedent or from the time his death was known, in case he died out of the Territory.

Court may order longer time.

SEC. 557. The county court in its discretion may also authorize the executor to continue the prosecution of any business in which the deceased was engaged at the time of his death, in order to wind up his affairs with greater advantage to the interest of the estate, but such permission does not exempt the executor from the necessity of returning a full inventory and appraisement of the effects of the deceased as accurately as practicable in the manner prescribed in other cases, and as may be further directed by the court.

Clerk may grant letters in vacation.

SEC. 558. Administration may be granted on estates by the clerk of the county court in vacation under the same restrictions as if granted by the court; and the bond of the executor or executors shall be taken and approved by the clerk, and shall be deemed valid until the next regular term of the court when such bonds shall be submitted to the court for their approval, and if not approved, a new bond or additional security may be required by the court.

THE INVENTORY AND COLLECTION OF THE EFFECTS OF
DECEASED PERSONS.

Inventory of effects.

SEC. 559. Within thirty days after their appointment, unless for good cause an extension of that time is specially given by the court, the executors shall make and return into the court, an inventory of all the personal effects of the deceased of every description which have come within their knowledge, embracing all book accounts which do not appear by the books or papers of the deceased to have been settled.

Property of widow exempt.

SEC. 560. When the deceased leaves a widow, no property which in her hands as the head of a family would be exempt from execution, shall be deemed assets or administered upon as such, but the same after being inventoried without appraisement, shall remain with her and the family until disposed of according to law.

Life insurance not subject to debts of deceased.

SEC. 561. The avails of any life insurance are not subject to the debts of the deceased except by special contract or arrangement but shall in other respects be disposed of like other property left to the deceased.

Compensation of appraisers.

SEC. 562. All personal property except as aforesaid found in the county, must be appraised by appraisers who shall be appointed by the court, and shall each receive five dollars per day for his services.

Property in other counties.

SEC. 563. If any portion of such property be in another county, the same appraisers may serve, or others may be appointed by the court or by a disinterested justice of the peace in such county whose duties and compensation shall be as aforesaid.

Supplemental inventory.

SEC. 564. A supplemental inventory must be made out in like manner, whenever the existence of other property is discovered.

Person having wrongful possession of deceased person's effects.

SEC. 565. The court may summon before it any person suspected of having taken wrongful possession of any of the effects of the deceased, or of having had such effects under his control and may subject him to an examination under oath and if upon such examination it appears to the court that such suspected person has the wrongful possession of any property or effects of the deceased, the court shall order such property or effects to be delivered to the executor of the estate.

Disobedience of summons.

SEC. 566. If he disobey such order or summons, or refuses to answer the interrogatories propounded, he may be committed to the jail of the county until a compliance be yielded.

Compounding with debtor.

SEC. 567. The executor with the approbation of the court, may compound with any debtor of the estate who may be thought unable to pay his whole debt or in order to avoid doubtful litigation.

CHAPTER L.

THE DISPOSITION TO BE MADE OF THE PROPERTY OF THE DECEASED.

Maintenance of child.

SEC. 568. Upon the death of a sole surviving parent leaving a minor child, the court may make such order and allowance for its temporary support as may be suitable and proper.

Prejudicing the rights of creditors.

SEC. 569. When a person by his will, makes such a disposition of his effects as to prejudice the rights of creditors, the will may still be sustained by the giving of security to the satisfaction of the court, for the payment of the claims of the creditors to the extent of the value of the property thus devised.

Collection of debts.

SEC. 570. When no defferent direction is given in the will, debts due the estate shall as far as practicable be collected, and the debts owing by the estates paid off therewith, to the extent of the means thus obtained.

Sale of personal effects.

SEC. 571. The court on the application of the executor, shall from time to time direct the sale of such portions of the personal effects as are of a perishable nature, or which from any cause would otherwise be likely to depreciate in value, and also such portions as are necessary to pay off the debts and charges upon the estate in addition to the means above provided.

Landed property to be sold in cases.

SEC. 572. If the personal effects are found inadequate to satisfy such charges, a sufficient portion of the landed estate may be ordered to be sold for that purpose.

Application for that purpose.

SEC. 573. Application for that purpose can be made only after a full statement of all the claims against the estate, and after rendering a full account of the disposition made of the personal estate.

Notice must be given.

SEC. 574. Before any order to that effect can be made, such notice as the court may prescribe must be given to all the persons interested in such landed estate.

Lands divided into parcels.

SEC. 575. If convenient, the landed estate must be divided into parcels and each appraised in the manner above provided for personal property, and the appraisalment filed in like manner.

Whole may be sold.

SEC. 576. When a part cannot be sold without material prejudice to the general interests of the estate, the court may order the sale of the whole, or of such part as can be sold advantageously.

Private sale.

SEC. 577. Property may be permitted to be sold at private sale whenever the court is satisfied that the interests of the estate will be thereby promoted.

Sale at public auction.

SEC. 578. In other cases sales must be made at public auction after giving the same notice, as would have been necessary for the sale of such property on execution.

Appraisement price must be paid for land.

SEC. 579. No property can be sold at private sale for less than the appraisement price, without the express approbation of the judge of the county court.

Credit.

SEC. 580. Property may be ordered to be sold on a partial credit of not more than twelve months.

Prevention of sale.

SEC. 581. Any heir or other person interested in the estate, who may wish to prevent the sale of the whole or any part thereof, may accomplish that purpose by giving bond to the satisfaction of the court, conditioned that he will pay all demands against the estate, to the extent of the value of the property thus kept from sale, as soon as called upon by the county court for that purpose.

When conditions of bond are broken.

SEC. 582. If the conditions of such bond are broken, the property is still liable for those debts, unless it has passed into the hands of a *bona fide* purchaser, and the executors may take possession thereof and sell the same under the direction of the court, or they may prosecute the bond, or both at once, if the court so direct.

Compliance with bond.

SEC. 583. If the conditions of the bond are complied with, the property passes by devise, distribution or descent in the same manner as though there had been no debts against the estate.

Conveyance to the purchaser.

SEC. 584. When landed estate is sold, conveyances thereof, executed by executors, pass to the purchaser all the interest of the decedent therein. But such conveyance shall not be valid until approved by the judge of the county court.

Confirmation of sale.

SEC. 585. Such approval shall be entered on record. A brief memorandum thereof must be indorsed upon the deed with the signature and seal affixed thereto; and the deed so indorsed shall

be presumptive evidence of the validity of the sale and of the regularity of all the proceedings connected therewith.

Limitation of action.

SEC. 586. No action for the recovery of any landed estate sold by an executor, can be sustained by any person claiming under the deceased unless brought within three years next after the sale.

CHAPTER LI.

FILING CLAIMS AGAINST AN ESTATE.

Claims filed within ten days.

SEC. 587. Within ten days after the receipt of their commission, the executors shall publish a notice of their appointment in such manner as the court directs, either by posting up or by publication in a newspaper.

SEC. 588. This notice need be given only by the executors first appointed and qualified.

Claims against estate.

SEC. 589. Claims against the estate must be clearly stated, sworn to and filed. Ten days notice of the hearing, indorsed on a copy of the claim must be served upon one of the executors in the manner required for commencing actions in the district court.

Rules of evidence.

SEC. 590. The same rules of evidence, including those in relation to the calling and examination of the party as a witness, shall be observed as in cases pending in the district court.

Set offs.

SEC. 591. The executor may, with the approbation of the court, admit claims, with the correctness of which he is satisfied, but not until the claimant has sworn to their correctness. The like rule shall be observed in relation to payments or set offs to any demands due the estate.

Claims passed upon by the county court.

SEC. 592. All claims not established in the district court must be submitted to, and passed upon by, the county court; and no claim except such as the executors may admit can be allowed, unless sustained by such testimony as would be sufficient on a trial in the district court.

Prosecution of Claims.

SEC. 593. Claims for a mere money demand where no lien is to be enforced, shall not, except with the approbation of the county court, be prosecuted originally in the district court.

Demands not due.

SEC. 594. Demands, though not yet due, may be presented, proved, and allowed as other claims.

Contingent liabilities.

SEC. 595. Contingent liabilities must also be presented and proved, or the court or executor shall be under no obligation to make any provision for satisfying them when they may afterwards accrue.

Referees.

SEC. 596. Claims against an estate and set off thereto may, in the discretion of the court, be proved up before one or more referees, to be agreed upon between the parties or approved by the court, and their decision being entered upon the record, becomes a decision of the court.

Unsatisfied judgment.

SEC. 597. Unsatisfied judgments rendered prior to the death of the decedent, shall be entered in the catalogue of claims, and so much thereof allowed as the plaintiff will show by his oath or otherwise is still unpaid. But they possess no preference over other claims, except the liens allowed by law in their favor.

Suit pending at death of plaintiff.

SEC. 598. Suits pending at the time of such death may be prosecuted to judgment and then placed in the catalogue of established claims. But no lien is created by such judgment.

Executors interest in claims.

SEC. 599. If either of the executors is interested in favor of a claim against the estate, he shall not serve in any matter connected with that case. And if all the executors are thus interested, the court shall appoint some competent person a temporary executor in relation to such claims.

CHAPTER LII.

THE PAYMENT OF CLAIMS AGAINST THE ESTATE.

First charges to be paid.

SEC. 600. As soon as the executors are possessed of sufficient means over and above the expenses of administration, they shall pay off the charges of the last sickness and the funeral of the deceased.

Maintainance of widow and minor children.

SEC. 601. They shall in the next place pay any allowance which may be made by the court for the maintainance of the widow and minor children, previous to the time when a sufficient amount for such maintainance can be paid to them out of their shares of the estate, which amount so advanced shall afterwards be deducted from their respective portions.

Order of payment of claims.

SEC. 602. Other demands against the estate are payable in the following order:

First: Debts entitled to a preference under the laws of the United States;

Second: Public rates and taxes;

Third: Claims filed within six months after the notice given by the executors of their appointment;

Fourth: All other debts;

Fifth: Legacies.

What claims are barred.

SEC. 603. All claims of the fourth of the above classes not filed and proved within one year of the giving of the notice aforesaid, are forever barred, unless the claim is pending in the district or supreme court, or unless peculiar circumstances entitle the claimant to equitable relief.

Time for filing claims.

SEC. 604. After the expiration of the time for filing the claims of the third of the above classes, the executors shall proceed to pay off all claims against the estate in the order above stated as fact as the means for so doing come into their hands.

When claims may be paid off.

SEC. 605. Claims of the fourth class may be paid off at any time after the expiration of six months as aforesaid without any regard to those claims not filed at the time of such payment; and even legacies may be paid off at any time after the expiration of one year from the date of the notice of appointment of the executor, provided sufficient be left on hand to satisfy all the claims filed at the date of such payment, the claims of the fourth class as well as the legacies being within the limits above fixed preferred to the unfilled claims, whether the estate be solvent or not.

Claims taken in order.

SEC. 606. No payment can be made to a claimant in any one class until those of a previous class are satisfied.

Payments of demands not due.

SEC. 607. Demands not yet due shall be paid off if the holders will consent to such a rebate of interest as the court thinks reasonable. Otherwise, the money to which such claimant would be entitled shall be safely invested until his debt becomes due.

Proved up in order in which filed.

SEC. 608. Within their respective classes, debts shall be paid off in the order in which they have been proved up, subject to the provisions of the following section; but the court shall permit them to be proved up in the order in which they are filed.

Striking of a dividend.

SEC. 609. If there are not likely to be means sufficient in all to pay off the whole of the debts of any one class, the court shall from time to time strike a dividend of the means on hand among all the creditors of that class, and the executor shall pay the several amounts accordingly.

Funds belonging to estates.

SEC. 610. The executors may, with the approbation of the court, use funds belonging to the estate to pay off incumbrances upon lands claimed or contracted for by him prior to his death.

Payment of legacies.

SEC. 611. Legacies payable in money may be paid on like terms whenever the executors possess the means which can be thus used without prejudice to the interest of any claim already filed.

SEC. 612. After the expiration of the one year allowed for filing claims as above provided, such legacies may be paid off without requiring the security provided for in the two preceding sections, if the means are still retained to pay off all the claims proved or pending as hereinbefore contemplated.

Securities for legacies.

SEC. 613. If the testator has not prescribed the order in which legacies are to be paid off, and if no security is given as above provided in order to expedite their time of payment, they may be paid off in the order in which they were contained in the will, when the estate is sufficient to pay all.

Ratable payments.

SEC. 614. When not incompatible with the manifest intention of the testator, the court may direct all payments of money to legatees to be made ratably.

SEC. 615. Such must be the mode pursued when there is danger that the estate will prove insufficient to pay off all the legacies, unless security be given to refund as above provided.

Failure to make payments as above provided.

SEC. 616. If the executors fail to make payment of any kind in accordance with the order of the court, they and their sureties may be summoned to appear before the court at a time to be specified in the summons not less than ten days from the time of service to show cause why they have so failed as aforesaid.

Judgment on bond of executors.

SEC. 617. If no sufficient cause be shown, the court shall render judgment on the bond of the executors for the amount of money directed to be paid, together with costs, and shall issue execution accordingly.

SEC. 618. When any of the obligors in the bond is not served with such summons, a similar course may be pursued to that authorized in parallel cases in the district court, and with like consequences.

THE DISTRIBUTION OF PERSONAL PROPERTY.

SEC. 619. The personal property of the deceased, not necessary for the payment of debts, nor otherwise disposed of as hereinbefore provided, shall be distributed to the same persons and in the same proportions as though it were real estate.

SEC. 620. The distributive shares shall be paid over as fast as the executor can properly do so.

Property itself to be distributed.

SEC. 621. The property itself shall be distributed in kind, whenever that can be done satisfactorily and equitably; in other cases the court may direct the property to be sold and the proceeds to be distributed.

Support of family.

SEC. 622. When the circumstances of the family require it, the court may, in addition to what is hereinbefore set apart for their use, direct a partial distribution of the money or effects on hand at any time after filing the inventory upon the execution of security like that required of legatees in like cases.

CHAPTER LIII.

THE DISPOSITION OF REAL PROPERTY.

Wife's interest in the real estate of her husband.

SEC. 623. One third in value of all the real estate in which the husband at any time during the marriage had a legal and equitable interest, and to which the wife has made no relinquishment of her rights shall under the discretion of the court, be set apart by the executor as her property upon the death of the husband if she survive him. Continuous cohabitation as husband and wife is presumptive evidence of marriage for the purpose of giving the right aforesaid.

Dwelling house and homestead to be included in wife's share.

SEC. 624. Such share shall be so set off as to include the ordinary dwelling house and the land given by law to the husband as a homestead, or so much thereof as will be equal to the share allotted to her by the last section, unless she prefers a different arrangement. But no different arrangement shall be permitted where it would have the effect of prejudicing the rights of creditors.

Mutual consent of all parties.

SEC. 625. The share thus allotted to her, may be set off by the mutual consent of all the parties interested when such consent can be obtained, or it may be set off by referees appointed by the court.

Widow's dower.

SEC. 626. The widow's dower cannot be effected by any will of her husband, if she objects thereto, and relinquishes all rights conferred upon her by the will.

Children's share.

SEC. 627. Subject to the rights and charges hereinbefore contemplated, the remaining estate of which the decedent died seized, shall, in the absence of other arrangement by will, descend in equal share to his children.

Heirs of such children shall inherit.

SEC. 628. If any one of his children be dead, the heirs of such children shall inherit his share in accordance with the rules herein prescribed in the same manner as though such child had outlived his parent.

When intestate leaves no issue.

SEC. 629. If the intestate leave no issue, the one half of his estate (including the dower of his wife) shall go to his father, and the other to his wife, and if he leaves no wife or issue, the whole shall go to his father.

Ascending ancestors.

SEC. 630. If his father be previously dead, the portion which would have fallen to his share by the above rules, shall be disposed of in the same manner as though he had outlived the intestate and died in the possession and ownership of the portion thus falling to his share, and so on through each ascending ancestor, and his issue, unless heirs are sooner found.

CHAPTER LIV.

EXECUTORS ACCOUNTING.

When account to be rendered.

SEC. 631. Within one year from the issuing of the first commission to the executive, and sooner, if required by the court, he shall render his account to the court, showing the then condition of the estate, its debts, and its effects. And from time to time, as may be convenient, and as may be required by the court, he shall render further accounts, until the estate is finally settled.

What to embrace.

SEC. 632. Such actions shall embrace all matters directed by the court and pertinent to the subject.

Executor may be examined on oath.

SEC. 633. The executor may be examined under oath by the court upon any matter relating to his accounts when the vouchers and proofs in relation thereto are not sufficiently full and satisfactory.

Must account for property at appraised value.

SEC. 634. He must account for all the property inventoried at the price at which it was appraised, as well as for all other property which has come into his hand belonging to the estate.

Appraisements.

SEC. 735 [635]. The appraisement is only presumptive evidence of the value of an article, and shall be so regarded either for or against the executor.

Executor to derive no profit for higher price.

SEC. 736 [636]. He shall derive no profit from the sale of prop-

erty for a price higher than the appraisement, nor is he chargeable with any loss occurring without any fault of his own.

Failure to account cause for removal.

SEC. 737 [637]. Any executor failing to account, upon being required to do so by the court, may be removed, and shall be liable on his bond for all the damages caused by his failure.

SEC. 138 [638]. Executors shall be allowed the following commissions upon the personal estate sold or distributed by them, and for the proceeds of real estate sold for the payment of debts which shall be received in full compensation for all their ordinary services.

Compensation of executors.

SEC. 739 [639]. For the first one thousand dollars, at the rate of ten per cent. For the overplus between one and five thousand dollars, at the rate of five per cent. For the amount over five thousand dollars, at the rate of two per cent.

Further allowances, &c.

SEC. 640. Such further allowances as are just and reasonable may be made by the court for actual, necessary and extraordinary expenses or services.

Contesting settlement.

SEC. 641. Any person interested in the estate may attend upon the settlement of the accounts of the executor and contest the same. Accounts settled in the absence of any person adversely interested and without notice to him, may be opened within three months, on his application.

Correction of mistakes.

SEC. 642. Mistakes in settlements may be corrected at any time before final settlement and discharge of the executor, and even after that time on showing such grounds for relief in equity, as will justify the interference of the district court.

Judgments against executors.

SEC. 643. If judgment is rendered against an executor for costs in any suit prosecuted or defended by him in that capacity, execution shall be awarded against him as for his own debt, if it appear to the court that such suit was prosecuted or defended without reasonable cause. In other cases the execution shall be awarded against him in his representative capacity only.

Final settlements.

SEC. 644. Upon final settlement by the executor, which shall be made one year from the date of administration, an order shall be entered discharging him from farther duties and responsibilities.

CHAPTER LIII.

APPOINTMENT OF COMMISSIONERS TO CODIFY LAWS.

Code commissioners.

SEC. 645. Eli Carter and Z. Jackson are hereby appointed a committee to arrange and codify the acts passed by the Legislature, with power to make the necessary alterations in the chapters, sections and parts of sections from the code of Iowa as referred to in the acts to establish a civil and criminal code as shall complete a code of laws as near as may be of a general nature only, and furnish an index to the same.

We, the commissioners appointed to prepare a code of criminal and civil law for the Territory of Jefferson, do hereby certify the foregoing to be the codes of criminal and civil law prepared by us, from the code of Iowa as specified by the first General Assembly of the Provisional Government in an act passed for that purpose.

Witness our hands, this 23d day of January, A. D. 1860.

ELI CARTER,
ZAREMBA JACKSON.

AN ACT

To Regulate Elections.

Polls.

SEC. 1. *Be it enacted by the Provisional Legislature of the Territory of Jefferson, the Governor approving.* At the general elections, a poll shall be opened at the place of election in each township of each county.

Judges of election.

SEC. 2. There shall be three judges of election, who shall possess the qualification of voters and shall be chosen from among the voters on the morning of election.

SEC. 3. There shall be two clerks of election, who shall be chosen by the judges of election.

Oath of judges and clerks.

SEC. 4. Before opening the polls, each of the judges and clerks of election shall take the following oath: I, A. B., do solemnly swear, that I will impartially and to the best of my knowledge and ability perform the duties of (judge or clerk) of this election, and will judiciously endeavor to prevent fraud, deceit and abuse in conducting the same.

Oath to be entered in poll books.

SEC. 5. One of the clerks can administer the oath to the judges, and the judges can administer the oath to the clerks. The oath must be subscribed by the party, entered in the poll books and certified by the person administering the same.

Time of opening and closing the polls.

SEC. 6. The polls shall be opened at nine o'clock in the forenoon, and kept open until six o'clock in the evening, and if the judges deem it necessary, in order to receive all the votes they may keep the polls open until nine o'clock in the evening; proclamation shall be made at the opening of the polls and half hour before the close of the polls.

Constables to preserve the peace.

SEC. 7. Any constable of the township, who may be designated by the judges of election, and directed to attend at the place of election, and he is authorized and required to preserve order and peace at and about the same.

Riotous behavior at election.

SEC. 8. If any person conducts in a noisy, riotous or tumultuous manner, at or about the polls, so as to disturb the election or insults or abuses, the judges or clerks of election the constable may forthwith arrest him and bring him before the judges and they by a warrant under their hands, may commit him to the jail of the county, or cause him to be held under arrest for a term not exceeding twenty-four hours.

Poll books.

SEC. 9. The county clerk shall prepare and furnish to a constable in each township of his county, two poll books having each of them a sufficient column for the names of the voters, a column for the number, and sufficient blank leaves to contain the entries of the oaths, certificates, and returns; which poll books shall be furnished by the constable to the judges of election.

Manner of voting.

SEC. 10. In voting, the electors shall deliver their ballots to one of the judges who shall deposit them in the ballot-box; but no person is entitled to vote at any other place than in the township in which he resides at the time he offers to vote.

Ballots designate the office.

SEC. 11. The ballots shall designate the office for which the person therein named is voted for.

Challenging voters.

SEC. 12. Any person offering to vote may be challenged as unqualified by either of the judges or by any person who is an elector in this Territory, and it is the duty of each of the judges to challenge any person offering to vote whom he knows or suspects not to be duly qualified.

Qualification of elector.

SEC. 13. When any person is so challenged, the judges shall administer to him the qualifications of an elector, and may examine him as to his qualifications, and if the person insists that he is qualified and the challenge is not withdrawn, one of the judges shall tender to him the following oath:

Oath administered to voter.

SEC. 14. Do you solemnly swear, that you are a citizen of the Territory of Jefferson; that you are a resident of this county for the last three days; that you are twenty-one years of age, and that you have not voted at this election; and if he takes such oath his vote shall be received.

Name of voter entered in poll book.

SEC. 15. The name of each person when his ballot is received shall be entered by each of the clerks in the poll book kept by him, so that there may be a double list of voters.

Judges to canvass the votes.

SEC. 16. When the poll is closed, the judges shall proceed to canvass and ascertain the result of the election, unless they determine to adjourn the canvass to the next day which they may do, but no longer; and if the canvas be so adjourned the opening in the lid of the ballot-box shall be closed and sealed, the box locked and the key delivered to one of the judges, and the box and poll books to one of the clerks, to be securely kept until they meet on the next day.

Canvass in public; Two ballots folded together.

SEC. 17. The canvass shall be public, and shall commence by a comparison of the poll list from the beginning, and correction of any errors which may be found therein, until they shall be found or made to agree. If two or more ballots are found so folded together as to present the appearance of a single ballot as to convince the judges that they were cast as one, they shall not be counted, but they shall have the words rejected as double written upon them, be folded together again and kept as herein directed.

When ballots exceed voters; Election set aside.

SEC. 18. If the ballots for any officer are found to exceed the number of the voters in the poll lists, that fact shall be certified, with the number of the excess in the return, and if it be found that the vote of the township where the error occurred would change the result in relation to a county officer, if the person elected were deprived of so many votes, then the election shall be set aside to him, and a new election ordered, but if the error occur in relation to a township officer, it shall be at the discretion of the county court to order a new election or not. If the error be in relation to a district or Territorial officer, the fact shall be certified to the canvassers, and if it be found that the error would effect the result as to any particular office, a new election for that office shall be ordered in the county where the error happened as to that office.

What ballots rejected.

SEC. 19. If at any stage of the canvass, a ballot, not stating for what office the person therein named is voted for, be found in the box when officers of different kinds are to be elected, it is to be rejected.

Tally list.

SEC. 20. As a check in counting, each clerk shall keep a tally list.

What returns shall set forth; Form of return.

SEC. 21. A return in writing shall be made in each poll book, setting forth in words written at length the whole number of votes cast for each officer, (except those rejected) the name of each person voted for, and the number of votes given to each person for each different office, which return shall be certified as correct, signed by the judges and attested by the clerks. Such return shall be substantially [as] follows:

At an election at the house of _____ in
 township, in _____ county, Jefferson Territory, on
 the _____ day of _____ A. D. there were
 ballots cast for the office of _____ of which
 A. B. had _____ votes,
 C. D. had _____ votes;

A true return.

L. M. }
 N. O. } Judges of Election.
 P. Q. }

Attest. R. S. }
 T. W. } Clerks of Election.

And in the same manner for any other officer.

Disposition of poll books and return.

SEC. 22. One of the poll books containing such return shall be delivered to one of the justices of the peace in the township, to be by him preserved in his office. The other poll books, with its return, shall be enclosed, sealed, superscribed and delivered to one of the judges or clerks of election, who shall deliver the same within three days after the day of election to the county judges, who, after the county canvass shall file and preserve the same in their office.

Time of return.

SEC. 23. When the returns from all the townships are not made to the county court by the fourth day after the election, on the fifth day they shall send messengers to obtain them from those townships whose returns are wanting, the expenses of which shall be paid out of the county treasury on allowance.

County judges to canvass returns.

SEC. 24. As soon as the returns from all townships are received, the county judges shall open and examine the several returns, and make abstracts, stating in words written at length, the number of ballots cast in the county for each office, the name of each person voted for, and the number of votes given to each person for each different office.

SEC. 25. Two abstracts shall be made of all the votes which are to be returned to the secretary of the Territory, one to be sent to him, and the other to be filed in the county clerk's office.

Abstract to be signed by judge.

SEC. 26. The person having the greatest number of votes for any office, is to be declared elected.

Abstract to contain declaration of who is elected.

SEC. 27. Each of the abstracts shall be signed by the county Judges in their official capacity, and as county canvassers, and have the county seal affixed, except that when the incumbent of the offices of county judge is voted for for any office, the prosecuting attorney, clerk, and sheriff, shall act as the board of canvassers as relates to their office.

SEC. 28. Each abstract of the votes of such offices as the county alone elects, shall contain a declaration of whom the canvassers determine is elected, except when two or more persons receive an equal and the greatest number of votes.

Election book.

SEC. 29. The county court shall cause each of the abstracts mentioned in the preceding section to be recorded in a book to be kept in the county clerk's office for recording the result of county elections, and to be called the election book.

Delivery of certificate; Form; Certificate evidence of election.

SEC. 30. When any person thus elected has given bond and taken the oath of office as required by law, the county court shall deliver him a certificate of election under the seal of the court as follows:

Territory of Jefferson,

County.

At an election, holden in said county, on the day
of A. D. A. B. was elected to the office of
 of the above county, for the term of years from
that day; or if he was elected to fill vacancy, say until such an
election and until his successor is elected and qualified, and he has
qualified by giving bond and taking the oath of office as required
by law.

C. D., Presiding County Judge.

Which certificate shall be prima facie evidence of his election and qualification.

Certificate to be signed by clerk.

SEC. 31. The certificates of the county judges shall be signed by the county clerk.

SEC. 32. When the person elected is chosen to fill a vacancy, the certificate shall state for what time he is elected.

When two or more persons receive an equal number of votes.

SEC. 33. When two or more persons receive an equal and the highest number of votes for an office to be filled by the county alone, the county court shall issue a notice to such persons of such tie vote, and require them to appear at the county seat on a day named in the precept within ten days from the election day and determine by lot which of them is to be declared elected.

Abstract to be returned within ten days.

SEC. 34. Within ten days after the polls have been canvassed by the county board of canvassers in their respective counties, they shall return one of the abstracts to the office of the secretary of the Territory in all cases, where District or Territorial officers have been voted for, which returns shall be canvassed by the Governor, Secretary and Auditor of the Territory who shall constitute the board of Territorial canvassers.

Canvassers to make abstracts within 30 days.

SEC. 35. The board of Territorial canvassers shall make an abstract from the returns received at the office of the Secretary of the Territory, on the 30th day after the election, unless the same be Sunday, which shall then take place the day following, and shall state who has been elected to the District or Territorial offices that have been voted for at said election and shall contain the number of votes received by each candidate.

Secretary to record abstract.

SEC. 36. The Secretary of the Territory shall record the abstract in a book to be kept by him for recording the result of Territorial elections, and to be called the election book and also file the abstract.

Form of certificate; Certificate to be signed and attested.

SEC. 37. A certificate shall be prepared for each person elected in substance as follows:

Territory of Jefferson—At an election holden on the
day of A. D., A. B., was elected to the office
of of said Territory for the term of
years, (if to fill a vacancy, say until such an election.)
Given at this day of A. D.,

Which certificate shall be signed by the Governor if present, if not, by the Secretary, with the seal of the Territory affixed in

either case, and be attested by the other canvassers; but in the absence of the Governor, the Secretary's certificate shall be signed by the Auditor.

Certificate to be delivered.

SEC. 38. Such certificate of election shall be delivered to the person elected when he has qualified as provided by law.

JAMES A. GRAY,
Speaker of the House of Representatives.

ELI CARTER,
President Pro Tem. of the Council.

L. W. BLISS, Acting Governor.
Approved, January 25th, 1860.

PART THIRD.

GENERAL ACTS.

CHAPTER I.

ARTICLE FIRST.

Governor.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson—the Governor approving:* That the salary of the Governor shall be three thousand dollars annually, to be audited like other claims on the Territory, and paid quarterly out of any money in the Treasury not otherwise appropriated.

SEC. 2. The official term of the Governor, for the purpose of computing his salary, commences on the first Monday of November following his election, except in case of a special election to fill a vacancy in that office, when the term of service commences on the day of his qualification.

SEC. 3. When, during a vacancy of the office of Governor, the Secretary of the Territory performs the duties of that office, such officer may receive the compensation of Governor for such period as he fills the vacancy.

SEC. 4. Whenever the Governor receives notice of the commencement of any action or proceeding by which the rights, interests or property of the Territory are liable to be affected, he may employ counsel to act in conjunction with the counsel of the proper

party to protect the interest of the Territory, and when any civil action, is or is about to be, commenced by any prosecuting attorney in behalf of the Territory, if, in the opinion of the Governor, the case be such as to render it advisable, he may employ additional counsel to assist in the case.

SEC. 5. It shall be the duty of the Governor to commission all Territorial and County officers, for which he shall receive a fee of two dollars each.

SEC. 6. Expenses incurred in causing the laws to be executed (when not otherwise provided for,) and also in re-capturing fugitives from justice, fleeing from this Territory, may be allowed by the Governor, and paid out of the Territorial fund; upon an appropriation being made by the General Assembly.

ARTICLE SECOND.

Secretary.

SEC. 7. The salary of the Secretary of the Territory shall be two thousand dollars annually to be audited like other claims on the Territory, and paid quarterly out of any money in the Treasury not otherwise appropriated, and he may receive such sum for distributing the laws, and for indexing them, when he performs this duty as may be allowed by the General Assembly, and fees allowed by law, but not otherwise.

SEC. 8. He shall keep his office at the seat of Government, and perform all duties which at any time may be required of him by law; and he shall have charge of and keep all the acts and resolutions of the Territorial Legislature, and those which have been, or may be, passed by the General Assembly of the Territory; the enrolled copy of the organic act of the Territory; all official bonds of officers, approved by the Governor—except the bond of such Territory, and all the books, records, maps, register, and other papers, which now are, or hereafter may be, deposited, to be kept in his office.

SEC. 9. Commissions required by law to be issued by the Governor, shall be countersigned by the Secretary, who shall register each commission in a book, to be kept for that purpose, specifying the name of the officer, the office conferred, the date of the commission, and the tenure of office.

SEC. 10. The Secretary shall procure, at the expense of the Territory, for each county when organized, a seal for the District Court, of the following description: District Court
County Territory of Jefferson; and also provide the

necessary stationery and fuel for his office, and that for the General Assembly during its session; the account for which shall be audited like other claims on the Territory.

SEC. 11. Immediately after the adjournment of the General Assembly, he shall furnish the printer authorized to print the statutes, with copies of the Acts and Resolutions passed at the session, prepared with marginal abstracts, and cause them to be printed in a plain manner as a pamphlet.

SEC. 12. He shall make his certificate that the Acts and Resolutions therein contained, are truly copied from the original rolls, and cause the certificate to be printed at the end of each volume, which shall be prima facie evidence of their correctness.

ARTICLE THIRD.

Auditor.

SEC. 13. The salary of the Auditor of public accounts, shall be two thousand dollars annually, to be audited like other claims on the Territory, and paid quarterly from any money in the Treasury not otherwise appropriated; he shall keep his office at the seat of Government, and may receive fees allowed by law, but not otherwise.

SEC. 14. The auditor is the general accountant of the Territory, and it is his duty:

First: To keep and state all accounts between the Territory of Jefferson and the United States, or any other State or Territory, or any public officer of this Territory indebted thereto, or intrusted with the collection, disbursement, or other management of any funds belonging to the same, when they are derivable from, or payable into the Territorial Treasury.

Second: To settle the accounts of all County Collectors and Receivers of Territorial revenues, taxes, tolls and incomes, payable into the Territorial Treasury, for each of their official terms separately.

Third: To keep fair, clear, and separate accounts of all the revenues, funds, and incomes of the Territory, payable into the Territorial Treasury; and also of all disbursements and investments thereof, showing the particulars of the same.

Fourth: To settle the accounts of all public debtors for debts due the Territorial Treasury, and require such persons, or their legal representatives, who have not accounted at the proper time, to settle their accounts.

Fifth: To settle all claims against the treasury, and when the law recognizes a claim, but no appropriation has been made therefor, to

settle the claim and give the claimant a warrant on the Treasury for the same.

Sixth: To direct and superintend the collection of all moneys payable into the treasury, and to cause to be instituted and prosecuted the proper actions for the recovery of debts and other moneys so payable.

Seventh: To superintend the fiscal concerns of the Territory and secure their management in the manner required by law.

Eighth: To draw warrants on the Treasurer for money, directed by law to be paid out of the Treasury, as the same may become payable; and each warrant shall bear on its face its number, date, amount, the name of the payee, and a reference to the law under which it was drawn, to be entered into a book kept for that purpose, in the order of issuance; and as soon as practicable after issuing such warrant, he shall certify the above particulars in relation to it, to the Treasurer, who is required to enter the same in the same order.

Ninth: To have the custody of, and keep, all books, papers, records, documents, vouchers, and all conveyances, leases, mortgages, bonds, and other securities, appertaining to the fiscal affairs and the property of the State, which are not required by law to be kept in some other office; and to have charge of all property of the Territory where no other provision is made by law for its custody.

Tenth: To furnish to the Governor on his requisition, information in writing upon any subject connected with his office; and to suggest to the Governor, or the General Assembly, plans for the improvement and management of the public revenue and property.

Eleventh: To report to the General Assembly at its regular sessions, and at such other time as it may require, a complete settlement of the revenues, funds, income, taxable property, and other resources of the Territory, and of the property of the Territory, known to his office, and of the public revenues and expenditures of the Territory since his last report, up to the first Monday of
preceding each regular session, with a detailed estimate of the expenditures to be defrayed from the Treasury for the ensuing year, specifying each object of expenditure, and distinguishing between such as require to be provided for, and showing the probable deficiency of any former appropriations.

Twelfth: To perform all other duties which may from time to time, be required of him by law.

SEC. 15. The Auditor may at any time, require any person receiving money, securities, or property, or having the management, disbursement, or other disposition of any property, money, or securities, of the Territory, of which an account is kept in his office, to render statements thereof or information touching the same in his possession; and any such person refusing or neglecting to render such statement or information, shall forfeit the sum of

twenty five dollars, to be recovered by civil action in the name of the Territory.

SEC. 16. Every claim against the Territory, shall be presented to the Auditor for settlement within one year after the claims accrues, and not thereafter; and when a claim is so presented, the Auditor is authorized to swear and examine the claimant, and any other persons as witnesses, touching the claim or cause them to answer by affidavit or deposition.

SEC. 17. If any officer who is accountable to the treasury in respect to any money or property, neglect to render his account to the Auditor within the time prescribed by law, or if no time be so described, then within twenty-five days after being required so to do by the Auditor, the Auditor shall state an account against him from the books of the Auditor's office, charging ten per cent damages on the whole sum appearing due and interest at the rate of twenty per cent per annum on the aggregate, from the time when the account should have been rendered, all which may be recovered by an action brought on such account stated, or in the official bond of the officer.

SEC. 18. If any such officer fail to pay into the Treasury the amount received by him, within the time prescribed by law, or, having settled an account with the auditor, shall charge him with ten per cent. damages on the amount due, with interest on the aggregate from the time the first sum was payable, at the rate of twenty per cent. per annum, and the whole may be recovered by an action brought on either such account stated, or the official bond of the officer, and he shall forfeit his commission.

SEC. 19. The penal provisions in the preceding two sections are subject to any legal defenses which the officer may have against the account as stated by the auditor; but judgment for costs shall be rendered against the officer in the action, whatever be the result, unless he rendered an account within the time named in the above two sections.

SEC. 20. When a County Collector or other receiver of public money, seeks to obtain credit on the books of the Auditor's office, for payment made to the Treasurer, before giving such credit, the Auditor shall require him to take and subscribe an oath that he has not appropriated any of the public money for his private benefit (further than that which the law allows him) nor for the benefit of any other person.

SEC. 21. In those cases where the auditor is authorized to call upon persons or officers for information or statements, or to render accounts, he may issue his requisitions therefor, in writing, to the person or officers called upon, allowing reasonable time which, being served as a notice in a civil action by the sheriff of the county in which the person or officer called upon resides, or exer-

cises his office, and returned to the auditor with the service endorsed thereon, shall be evidence of the making the requisition therein expressed.

SEC. 22. All things pertaining to the auditor's office, are at all times open to the inspection of the Governor, the General Assembly, or either branch thereof, appointed to examine into them.

SEC. 23. All books, maps, stationery, furniture, fuel and other necessities for the use of the Auditor's office, are to be furnished at the expense of the Territory.

SEC. 24. The salary of the Treasurer of the Territory shall be fifteen hundred dollars annually, to be audited like other claims on the Territory, and paid monthly out of any money in the Treasury not otherwise appropriated, and he may receive fees allowed by law.

SEC. 25. He shall keep his office at the seat of government, and it is his duty to keep an accurate account of the receipts and disbursements of the Treasury, in books to be kept for that purpose, in which he shall specify the names of the persons from whom money is received, and on what account, and the time thereof.

SEC. 26. He shall enter the memorandum of warrants issued, as certified to him by the Auditor, and he shall receive in payment of public dues the warrants issued by the Auditor, in conformity with law, and redeem such when presented, if there be money in the Treasury not otherwise appropriated, and on receiving any such warrant, cause the person presenting it to endorse it, and the Treasurer shall write on its face: "Redeemed," and enter in his book containing the Auditor's memoranda, in the appropriate columns, the name of the person to whom in fact paid, the date of the payment and the amount of the interest, if any.

SEC. 27. When any amount is paid into the Treasury, the Treasurer is required to give to the person paying, receipts in duplicate, stating the fund to which the money belongs, one of which may be kept by him, and the other must be delivered to the Auditor in order to obtain the proper credit, and the amount shall be charged to the Treasurer.

SEC. 28. He shall pay no money from the Treasury, but upon the warrant of the Auditor, and shall pay such warrants in the order of their issuance, or if there be no money in the Treasury from which such warrants can be paid, he shall, upon request of the holder, endorse upon the warrant the date of its presentation, and sign it, from which time the warrant shall bear interest of twenty per cent. per annum, until the time limited in the next section.

SEC. 29. He shall keep a record of the number and amount of the several warrants so presented and endorsed for non payment,

and when there are funds in the Treasury for their payment, to an amount sufficient to render it advisable, he shall give notice thereof, and to what number of warrants the funds will extend, or the number of outstanding warrants which the funds will pay, by three insertions in a newspaper, printed at the seat of government; and at the expiration of thirty days from the day of the first insertion, the interest on the warrants so notified of being payable, shall cease.

SEC. 30. Once in each week, he shall certify to the Auditor the number, date, amount, and page of each auditor's warrant by him taken up, with the date when taken up, and the amount of interest allowed, if any; and on the first Monday of March, June, September and November, annually, he is directed to account with the Auditor, and deposit in his office all such warrants received at the Treasury, and take the Auditor's receipt therefor.

SEC. 31. As soon as practicable, after the first Monday of preceding the regular session of the General Assembly, he shall report to the Governor, the state of the Treasury up to that date, exhibiting the amount received and paid out by the Treasurer since his last report, and the balance remaining in the Treasury.

SEC. 32. It is his duty to submit his books, accounts, vouchers and funds, to the inspection of the Governor, the General Assembly, either house thereof, or any committee of either house appointed for that purpose when required thereby.

SEC. 33. The expenses of the Treasury are to be audited like other claims on the Territory, and paid by the Territory.

ARTICLE FOURTH.

Attorney General.

SEC. 34. The salary of the Attorney General shall be one thousand dollars, to be audited as other accounts, and payable out of the Treasury, out of any funds not otherwise appropriated, together with such fees as are allowed by law.

SEC. 35. His duty shall be to conduct and prosecute all suits in the Supreme Court in which the Territory of Jefferson shall be concerned; and give his advice upon questions of law, when required by the Governor or when requested by the Territorial officers, touching matters that may concern their departments.

SEC. 36. The salary of the Marshal shall be five hundred dollars annually to be audited as other accounts, and paid out of any money in the Treasury not otherwise appropriated, together with such fees as may be allowed by law, but no others.

SEC. 37. His duties shall be to attend upon the Supreme Court of the Territory, and execute and return all writs issued from said court, and faithfully carry out the orders of said court.

SEC. 38. Before entering upon the duties of his office, he shall be required to enter into bonds with the Territory, with four good and sufficient sureties, in the penal sum of ten thousand dollars, conditioned for the faithful performance of his duties by himself and deputies.

SEC. 39. That the fee of the Marshal shall be in all cases like those received by sheriffs for like service.

Approved, December 3d, 1859.

CHAPTER II.

AN ACT.

Further defining the Power of the Governor.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:—*That the Governor is hereby authorized and empowered to procure the publication of such of the general laws of this territory, by the public printer, as in his opinion is expedient and necessary for the immediate and successful operation of the Provisional Government. Provided that none of the laws of this Territory, shall be so construed as to give the public printer of this territory the exclusive right and duty to print and bind the laws of this Territory.

SEC. 2. The Governor is also empowered to procure the printing of such blanks of various kinds as are necessary for his convenience in office, and all other territorial officers.

SEC. 3. The Governor is also empowered to draw his order upon the Auditor of the territory for the issue of such Auditor's warrants as are necessary to defray the expense of the publishing of such laws, and the printing of such blanks. Provided that the price charged for such work is reasonable, and as cheap as it can be procured at any other printing establishment in the territory.

SEC. 4. The Governor is also empowered to appoint such Justices of the Peace as are necessary to enable the law of the territory to go into complete and successful operation immediately after the adjournment of the present session of the General Assembly.

SEC. 5. He is also empowered to appoint such constables as are necessary for the immediate operation of the laws of the territory, and also any other officers required by the laws, and not otherwise provided for.

Approved, December 3d, 1859.

CHAPTER III.

AN ACT.

Defining the Qualifications of Public Officers.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That no civil officer elected by the people of this territory, is empowered to enter upon the duties of the office to which he was elected, until he has been qualified as provided in the Organic Act of the territory, or until he has qualified as required in this chapter. The Governor by the oath of office before the Chief Justice of the territory, that he will support the Constitution of the United States and the Organic Act of this Territory; and will faithfully, impartially, and to the best of his knowledge and ability, discharge the duties incumbent upon him, as the Governor of the territory, which oath shall be filed in the office of the Secretary of the territory.

SEC. 2. The Secretary of the territory, treasurer, Auditor, Attorney General, and Superintendent of Public Instruction, by taking the oath of office before the Chief Justice of the Supreme Court, that they will support the Constitution of the United States, the Organic Act of the territory; and that they will faithfully and impartially discharge the duties of their respective offices as provided by law, which oath shall be filed in the office of the Secretary.

SEC. 3. The members of the Provisional Legislature by the President and Speaker of their respective houses, by taking an oath to support the Constitution of the United States, the Organic Act of the territory, and faithfully to discharge the duties incumbent upon them as Legislators; the President and Speaker of the respective houses having first taken said oath before the Chief Justice of the territory.

SEC. 4. The Chief Justice by taking the oath of office before the president of the board of canvassers, that he will support the Constitution of the United States, the Organic Act of the territory, and that he will without fear, favor, affection, or hope of reward, to the best of his knowledge and ability, administer justice according to law, equally to the rich and the poor, after which he shall administer the same oath to the Associate Justices of the territory, which oaths shall be filed with the Secretary of the territory.

SEC. 5. The judges of the county courts, sheriffs, clerks of the district court, county treasurer, assessor, and recorder, and all other county officers created by the laws of this territory, shall, before they enter upon the discharge of the duties of their respec-

tive offices, take the following oath of office before some officer qualified to administer oaths, that they will support the Constitution of the United States, and the Organic Act of this Territory; and that they will faithfully discharge the duties of their office according to law, the officer administering the same, shall file said oath in the office of the clerk of the county court.

SEC. 6. Justices of the peace, constables, trustees of townships, clerks of townships, and other township and district officers, shall take the oath of office presented in section five of this act, in such modifications as may be necessary to comprehend the duties of their offices, before some officer authorized to administer oaths; which oaths shall be filed in the office of the county clerk.

SEC. 7. The following named officers, in addition to taking the office above provided, are also required to give bond to the Territory or County, as the case may be, to the satisfaction of the approving officer or officers, in such sum as may be prescribed by law. "That as (naming the office) in County (or Territory of Jefferson) he will render a true account of his office and of his doings therein, to the proper authority when required thereby, or by law; that he will promptly pay over to the person or officer entitled thereto, all money which may come into his hands by virtue of his office; that he will exercise hereafter all reasonable diligence and care in the preservation and lawful disposal of all money, books, papers, securities or other property appertaining to his said office, and deliver them to his successor, or any other person authorized to receive the same; and that he will faithfully and impartially, without fear, favor, fraud or oppression, discharge all other duties now or hereafter required of his office.

SEC. 8. The bonds of the Territorial officers shall be given to the Territory, those of County officers to the County.

SEC. 9. The bond of the Treasurer of the Territory shall be in the penal sum of twenty-five thousand dollars; those of the Secretary and Attorney General, in the sum of five thousand dollars each, which bonds, after being approved by the proper authority, shall be filed in the office of the Secretary of the Territory, except the bond of the Secretary, which shall be filed in the office of the auditor of public accounts.

SEC. 10. The County Treasurer, Assessor, Recorder, Sheriff and Clerk of the District and County Court, shall each give bond, to be approved by the County Court, in a sum of not less than two thousand dollars, and as much more as may be directed by the County Court, which bond, after being approved by the County Court, with the approval endorsed thereon, shall be filed in the office of

the County Clerk, except the bond of the District and County Clerk, which shall be filed with the Recorder.

SEC. 11. Justices of the Peace and Constables shall give bond in such sums as may be directed by the County Court, which shall approve the same, and cause them to be filed in the office of the County Clerk.

SEC. 12. The bonds of all Territorial and District officers shall be signed by at least four sureties; the bonds of all County officers by at least two sureties.

SEC. 13. The bonds of Territorial and District officers are required to be approved by the Governor before they can be filed, and those of County and Precinct officers by the County Court, which approval shall be endorsed upon the bond and signed by the approving officers.

SEC. 14. The several territorial officers elected on the 27th day of October, 1859, shall qualify and enter upon the discharge of their respective duties as above required by this act, within ninety days from the day of their election; and all county, precinct, and district officers shall qualify as herein above directed, and enter upon the discharge of the duties of their office within twenty days from the day on which they were elected; any person elected to any of the above offices, who do not qualify within the time above specified, shall be regarded as declining the office.

SEC. 15. When any election is contested, the person elected shall have twenty days in which to qualify, after the day of their decision.

SEC. 16. The bonds of officers shall be construed to cover duties required by law, subsequent to giving them.

SEC. 17. No official bond, shall be void for want of compliance with the statute, but it shall be valid in law for what is contained therein.

SEC. 18. When the incumbent of an office is re-elected, he shall qualify as above directed; and when it is ascertained that the incumbent hold over another term by the reason of the non-election of a successor, or for the neglect or refusal of the successor to qualify, he shall qualify anew within a time to be fixed by the officer who approves of the bond of such officer.

SEC. 19. The governor, members of the council and house of representatives, and the president and speaker of their respective bodies, having qualified according to the provisions of this bill, are hereby declared legally qualified to the discharge of their respective duties.

Approved November 25th, 1859.

CHAPTER IV.

AN ACT

Establishing a Judicial System for the Territory of Jefferson.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:—*The judicial powers of the territory shall be vested in a supreme court, a district court in each organized county in the territory, a county court for each organized county, and such miners' and justices' courts as may be from time to time established.

SEC. 2. The supreme court shall consist of three judges; and shall have appellate jurisdiction only, except in such matters as may be otherwise provided by law; and there shall be holden a term of the supreme court quarterly, at the capital of the territory, at such times as may be prescribed by law.

SEC. 3. The district court shall be holden by one of the judges of the district court in each organized county monthly, and shall have original jurisdiction in all matters of controversy, civil and criminal, unless otherwise expressly provided by law.

SEC. 4. There shall be a County Court in each organized county in the territory, to consist of one Judge and two Associate Justices, elected by the qualified electors, who shall have original jurisdiction in all matters relating to probate or county business, as authorized in the chapter relating to the powers and jurisdiction of said courts; and shall hold such terms of their courts as may be prescribed by law.

SEC. 5. There shall be elected two justices of the peace in each township or precinct in the organized counties, who shall hold such terms of courts as the necessities of business may require, and shall have such power and jurisdiction as may be conferred upon them by the chapter relating to their courts. And there may be additional justices elected in any township or precinct where the same shall be ordered by the county court.

SEC. 6. There shall also be established in each mining district in the Territory, a court to be known as the Miners' Court, each judge of which shall be elected by the miners of the district for which he is to act, and shall hold his office for three months from the date of his election, and shall have original jurisdiction in all matters in regard to mining claims and miners' interest in working and operating the same; and he shall have power to try and decide all matters of dispute coming within his jurisdiction, from which decision there shall be an appeal to the District Court, and from thence to the Supreme Court as in other cases, by either party in interest to the suit under such restrictions and qualifications as

may be prescribed by law. Either party to an action in said court shall have the right of trial by jury of miners, to consist of twelve, unless a less number be agreed upon by the parties, provided a jury is demanded before the parties announce themselves ready for trial.

Approved, December 2nd, 1859.

CHAPTER V.

AN ACT

Defining the Duties of the Supreme Court of Jefferson Territory.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—The Supreme Court shall meet four times in each year at the capital of the Territory, viz: on the third Monday in April; the third Monday in July; the third Monday in October, and the third Monday in January.

SEC. 2. The Supreme Court shall have appellate jurisdiction over all final judgments and decisions of any of the district courts, as well as in cases of civil actions properly so called as in proceedings of a special and independent character.

SEC. 3. Intermediate orders involving the merits, or materially affecting the final decision may also be rendered on appeal.

SEC. 4. The Court may also in its discretion prescribe rules for allowing appeals on such other intermediate orders or decisions as they may think expedient, and for permitting the same to be taken and tried during the progress of the trial in the courts below, but such intermediate appeals must not retard proceedings in the trial in chief in the district court.

SEC. 5. The court may issue all writs and process necessary for the exercise and enforcement of its appellate jurisdiction.

SEC. 6. The court shall keep a record of its decisions upon all matters brought before it.

SEC. 7. The Supreme Court shall have a general supervision over the District Courts, to prevent and correct abuse where no other remedy is provided.

SEC. 8. The presence of two judges is necessary for the transaction of business, but one alone may adjourn from day to day, or to any particular day, or until the next term.

SEC. 9. All reasonable expenses of the Supreme Court, must be certified by one of the judges of the court and be allowed by the Auditor and be paid out of the Territorial Treasury.

SEC. 10. The Clerk of the Supreme Court shall keep a complete register of all proceedings of the court with an index to the same and shall perform all other duties ordinarily pertaining to his office.

CHAPTER VI.

AN ACT

To Define the Duties of the District Court.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—The District Court shall be held at the county seat in each of the counties, as elsewhere defined; when there shall be no court house in the county, the County Court of the county shall provide, at the expense of the county, a suitable place at the county seat for the holding the court.

SEC. 2. The District Court shall have original and exclusive jurisdiction over all matter and suits at law, and in chancery arising in each county in their respective districts, except when Justices of the peace have jurisdiction, and concurrent jurisdiction with said Justices of the Peace in causes where the demand or cause of action of the plaintiff does not exceed two hundred dollars.

SEC. 3. The said courts shall respectively have authority to hear and determine all cases of crimes and misdemeanors whatsoever that may be committed in their respective districts, except those which are exclusively cognizable before a Justice of the Peace or such other courts as by statute provided.

SEC. 4. A special term may be ordered and held by the District Judge in any county in his district, for the trial of any criminal offence he may deem necessary. In ordering a special term he shall direct whether a grand or petit jury, or both, or neither, shall be summoned.

SEC. 5. The District Courts may interchange and hold each others' courts.

SEC. 6. The Judges of the respective districts, shall appoint a Clerk of the Court for each county in the district. The clerk of each court shall keep a record of the proceedings of the court under the directions of the judge. He shall from time to time, read over all entries therein in open court, which, when correct, shall be signed by the judge.

SEC. 7. When it is not practicable to have all the records prepared, and thus approved, during the term, they may be read, cor-

rected, and approved at the next succeeding term, but such delay shall not prevent an execution from issuing in the mean time, and all other proceedings may take place in the same manner as though the record had been approved and signed. Entries authorized to be made in vacation, shall be read, approved and signed at the next term of the District Court.

SEC. 8. The record aforesaid is under the control of the court, and may be amended, or any entry therein expunged, at any time during the term at which it was made, or before it is signed by the judge aforesaid.

SEC. 9. The entries made, approved and signed at a previous time, can be altered only to correct an evident mistake or omission.

SEC. 10. If the judge does not appear on the day appointed for holding the court, the clerk shall make an entry thereof, in his record, and adjourn the house till next day, and so on, until the third day, unless the judge appears.

SEC. 11. If the judge do not appear by five o'clock in the afternoon on the third day, the court shall stand adjourned until the next regular term.

SEC. 12. If the judge is sick, or for any other sufficient cause, is unable to attend court at the appointed time, he may by written order direct an adjournment to a particular day therein specified, and the clerk shall on the first day of the term, or as soon thereafter as he receives the order, adjourn the court as therein directed.

SEC. 13. No recognizance or other instrument or proceeding, shall be rendered invalid by reason of there being a failure of the term, but all proceedings pending in court shall be continued to the next regular term, unless an adjournment be made as authorized in the last preceding section.

SEC. 14. In cases of such continuances or adjournments, persons recognized, or bound to appear, at the regular term which has failed as aforesaid, shall be held bound in like manner to appear at the time so fixed, and their sureties (if any) shall be liable in case of their non-appearance, in the same manner as though the term had been held at the regular time, and they had failed to make their appearance thereat.

SEC. 15. Upon any final adjournment of the court, all business, not otherwise disposed of, will stand continued generally.

SEC. 16. No judge of the Supreme or District Court shall practice as an attorney or counsellor at law, or give advice in relation pending, or about to be brought, in any of the courts of this Territory.

SEC. 17. All judicial proceedings must be public; unless otherwise specially provided by statute or otherwise agreed upon by the parties.

SEC. 18. All courts have power to administer oaths connecting

with any matter pending before them, either by any judge, justice, or clerk thereof, or by any person appointed for that purpose.

SEC. 19. A judge or justice is disqualified from acting as such, except by consent of parties, in any case where he is a party or interested, or where he is related to either party by consanguinity or affinity within the fourth degree, or where he has been attorney for either party in the action or proceedings.

SEC. 20. The District Court may by rule, compel a justice of the peace, or a Miners' Court, to allow an appeal, or to make, or amend his return according to law.

SEC. 21. When an omission or mistake has been made by a justice in his docket entries, and that fact is made to appear to the satisfaction of the court, the court may correct the mistake, or supply the omission or direct the Justice or the Miners' Court to do so.

SEC. 22. An appeal from an inferior to a District Court brings up a cause for a trial upon its merits alone.

SEC. 23. When judgment is affirmed, the District Court shall on motion render judgment against the appellant and his sureties, for the amount of the judgment below, damages and costs, in case such damages can be ascertained by the court without trial.

SEC. 24. No court can be opened, nor any judicial proceedings be had or transacted on Sunday, except:—

First: To give instruction to a jury then deliberating on their verdict;

Second: To receive a verdict, or discharge a jury;

Third: To exercise the powers of a single magistrate in a criminal proceeding;

Fourth: To exercise the required action necessary to issue a writ of attachment, or a writ of replevin, or a *capias*, and may issue the same upon the affidavit of the plaintiff, that the defendant is about to abscond;

Fifth: To appoint a competent person to serve such writs, if the sheriff or constable cannot be procured.

Sixth: Such appointed officer, or sheriff, or constable, may serve such writ, and do such other acts as are necessary to keep the property or person safe.

SEC. 25. The Clerks of the Supreme Court shall have power to appoint a deputy or deputies, who shall reside at the seat of government, or where the Supreme Court sits. Such deputies shall give bond to faithfully perform the duties of the office, before entering upon the same, and the principal shall at all times be liable on his bond for the action of his deputy or deputies.

SEC. 26. The Clerk of the District Court shall have power to appoint a deputy to assist him under the rules prescribed in section twenty-five.

Approved December 6th, 1859.

CHAPTER VII.

ATTACHMENT.

AN ACT

Regulating and authorizing the issuing of Writs of Attachments and Garnishments.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—In an action for the recovery of money, the plaintiff may cause any property of the defendant which is not exempt from execution, to be attached at the commencement, ordering the progress of the proceedings by pursuing the cause hereinafter prescribed.

SEC. 2. If it be subsequent to the commencement of the action, a separate petition must be filed, and in all cases, the proceedings relative to the attachment, are to be deemed independent of the ordinary proceedings, and only auxiliary thereto.

SEC. 3. The petition which asks an attachment, must in all cases be sworn to; it must state that as the applicant verily believes the defendant is a foreign corporation, or that he is in some manner, about to dispose of, or remove his property (in whole or in part) with intent to defraud his creditors; or that he has absconded so the ordinary process cannot be served on him.

SEC. 4. If the plaintiff's demand is founded on contract, the petition must state that something is due and as nearly as practicable the amount, which must be more than five dollars in order to authorize an attachment; the amount thus sworn to, is intended as a guide to the sheriff, who must as nearly as the circumstances of the case will permit, levy upon property fifty per cent greater in value than that amount.

SEC. 5. If the demand is not founded on contract, the original petition must be presented to the Judge of some Supreme or District Court or to the Judge of the County Court, who shall make an allowance thereon of the amount in value of the property that may be attached; the provisions of this section apply only to cases in the District Court.

SEC. 6. The property of a debtor may be attached previous to the time when the debt became due, when nothing but time is wanting to fix an absolute indebtedness, and when the petition in addition to that fact states that the defendant is about to dispose of his property, with intent to defraud his creditors—or that he is about to remove from the state, and refused to make any arrangement for securing the payment of the debt when it falls due, and which contemplated removal was not known to the plaintiff at the time the debt was contracted.

SEC. 7. Before any property can be attached, as aforesaid, the plaintiff must file with the clerk a bond for the use of the defendant, with sureties to be approved by the clerk, in a penalty at least double the value of the property sought to be attached, and in no case less than two hundred and fifty dollars, if in the District Court, nor less than fifty dollars if in a Justice's Court, conditioned that the plaintiff will pay all damages which the defendant may sustain by reason of the wrongful suing out of the attachment.

SEC. 8. In action of such bond the plaintiff therein may recover if he shows that the attachment was wrongfully sued out, and if wilfully wrong, he may recover exemplary damages, nor need he wait until the principal suit is determined before he brings suit on the bond.

SEC. 9. Where the suits are properly commenced in a District Court, of any county, the auxiliary process of attachment may run into any other county where property of the defendant can be found.

SEC. 10. The clerk shall issue a writ of attachment directing the sheriff of the county therein named, to attached property of the defendant to the requisite amount therein stated.

SEC. 11. The sheriff shall in all cases attach the amount of property directed, if sufficient, not exempt from execution, be found in his county, giving that in which the defendant has a legal and unquestionable title a preference over that in which the title is doubtful or only equitable.

SEC. 12. Writs of Attachment from the District Court may be sent into different counties at the same time, but if more property be attached in the aggregate than the plaintiff is entitled to hold in that manner, he must abandon the overplus and pay all costs incurred in relation to it.

SEC. 13. Stock or an interest owned by the defendant in any company, also debts due him, or property of his held by a third person, may be attached.

SEC. 14. The mode of Attachment must be as follows:

First: By giving the defendant in the action, if found within the county, and also the person occupying or in possession of the

property, if it is in the hands of a third person, notice of such attachment.

Second: The property, if capable of manual delivery, the sheriff must take it into his custody, if it can be found.

Third: Stock in a company is attached by notifying the president, or other head of the company, or the secretary, cashier, or other managing agent thereof, of the fact that the stock is so attached.

Fourth: Debts due the defendant, or property of his held by third persons, and which cannot be found, or the title to which is doubtful, are attached by garnishment thereof.

SEC. 15. The attachment by garnishment is affected by informing the supposed debtor or person holding the property, that he is attached as garnishee, and by leaving with him a written notice to the effect that he is required not to pay any debt due by him to the defendant, or thereafter to become due, and that he must retain possession of all property of the said defendant, there or thereafter being in his custody or under his control, in order that the same may be dealt with according to law.

SEC. 16. A sheriff or constable may be garnished for money of the defendant in his hands, so may a judgment debtor of the defendant, when the judgment has not been previously assigned, and also an executor for money due from the decedent to the defendant.

SEC. 17. Unless exempt, as provided in the next section, the notice must also require him to appear on the first day of the next term of the district court, wherein the main cause is depending, or on the day fixed for trial if in a justice's court, and answer such interrogatories as may there be propounded to him, or that he will be liable to pay the entire judgment which the plaintiff evidently obtains against the defendant.

SEC. 18. The plaintiff may, in writing, direct the sheriff to take the answer of the garnishee and append the same to his return.

SEC. 19. In such case the sheriff has power to administer an oath to garnishees requiring them to make true answer to the questions to be propounded, which questions shall be as follows:

First: Are you in any manner indebted to the defendant in this suit, or do you owe him money or property which is not yet due? and if so, state the particulars.

Second: Have you in your possession or under your control, any property, rights or credits of the defendant? If so, what is the value of the same? State all the particulars.

Third: Do you know any debts owing to the said defendant, whether due or not, or any property, rights, or credits, belonging to him, and now in the possession or under the control of others? If so, state the particulars.

SEC. 20. If the garnishee refuses to answer, fully and unequi-

vocally, each and all of the foregoing interrogatories, he shall be notified and required to appear and answer on the first day of the next term of the district court, or on the day fixed for trial as above provided.

SEC. 21. The questions propounded to the garnishee in court may be such as are above prescribed, to be asked by the sheriff, and such other as the court may think proper and right.

SEC. 22. Where a garnishee is required to appear at court, unless he has refused to answer as above contemplated, he is entitled to the pay and mileage of an ordinary witness, and may in like manner require payment beforehand, in order to be made liable for non-attendance.

SEC. 23. If, when duly summoned and his fee tendered, (if demanded) he fail to appear and answer the interrogatories propounded to him, without sufficient excuse for his delinquency, he shall be presumed to be indebted to the defendant to the full amount of the plaintiff's demand, and shall be dealt with accordingly.

SEC. 24. But for mere failure to appear, he is not liable to pay the amount of the plaintiff's judgment until he has had an opportunity to show cause against the issuing of an execution.

SEC. 25. A garnishee may at any time after answer, exonerate himself from further responsibility, by paying over to the sheriff the amount owing by him to the defendant, and by placing at the sheriff's disposal the property of the defendant, or so much of said debts and property as is equal to the value of property to be attached, all of which may afterward be treated as though attached in the usual manner.

SEC. 26. When the answer of the garnishee is made in the district court, the plaintiff may controvert any facts contained therein and specified by him, and issue being thereupon denied, may be tried in the usual manner. Upon such trial, the answer of the garnishee is competent testimony.

SEC. 27. If by any of the above methods it is made to appear that the garnishee was indebted to the defendant, or had any of the defendant's property in his hands, either at the time of his being served with the garnishee notice aforesaid, or at any time subsequent thereto, he is liable to the plaintiff, in case judgment is finally recovered by him, to the full amount of that judgment, or to the amount of said indebtedness and of the property so held by him, and a judgment shall be entered against him accordingly, unless he prefers paying or delivering the same to the sheriff as above provided.

SEC. 28. Property attached otherwise than by garnishment, is bound thereby from the time of the service of the attachment only.

SEC. 29. All moneys attached by the sheriff, or coming into his hands by virtue of the proceeding in attachment, shall forthwith

be paid over to the clerk, to be by him retained until further order of the court.

SEC. 30. The defendant may, at any time before judgment, discharge the property attached, or any part thereof, by giving bond with surety, to be approved by the sheriff, in a penalty at least double the value of the property sought to be released—conditioned that such property, or its estimated value, shall be delivered to the sheriff to satisfy any judgment which may be obtained against the defendant in that suit, within ten days after the rendition thereof. This bond shall be filed with the clerk of the court.

SEC. 31. To determine the value of the property in such cases, unless the parties agree otherwise, the sheriff shall summon two disinterested persons having the qualification of jurors who, after being sworn by him to make the appraisement faithfully and impartially, shall proceed to the discharge of their duty.

SEC. 32. If such persons disagree as to the value of the property, the sheriff shall decide between them.

SEC. 33. In an action brought upon the bond above contemplated, it shall be a sufficient defence that the property for the delivery of which the bond was given, did not at the time of the levy, belong to the defendant against whom the attachment was issued.

SEC. 34. The sheriff must, in all cases, return an inventory of the property attached as well as the appraisement above provided for, when such appraisement has been made.

SEC. 35. When the sheriff thinks the property attached is in danger of serious and immediate waste or decay, he may summon three persons having the qualifications of jurors, to examine the same. If they are of the opinion that the property requires soon to be disposed of, they shall specify a day beyond which they do not deem it prudent that it should be kept in the hands of the sheriff. He shall thereupon give the same notice as for the sale of goods in execution, and for the same length of time, unless the condition of the property renders a more immediate sale necessary, the sale shall be made accordingly.

SEC. 36. The money arising from such sale shall remain in the hands of the clerk to abide the event of the suit.

SEC. 37. The word sheriff as used in this chapter, is meant to apply to constables, when the proceedings are in a justice's court.

SEC. 38. When the proceedings are in a justice's court, the justice is to be regarded as the clerk of the court for all the purposes herein contemplated.

Approved November 25th, 1859.

CHAPTER VIII.

AN ACT

To Provide for the Recovery of Property by Writs of Replevin.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That when the object of the action is to recover the possession of personal property, the petition must in all cases be under oath.

SEC. 2. It must state that the property (describing it) is wrongfully detained by the defendant, that the plaintiff is entitled to the present possession thereof, and that it was not taken from him by any legal process; it must also state the alleged cause of detention according to his best belief and knowledge, and also the value of the property.

SEC. 3. He shall also execute a bond to the defendant, with sureties, to be approved by the clerk, in a penalty at least equal to twice the value of the property sought, conditioned that he will appear at the next term of the court and prosecute his suit to judgment, and return the property if a return be awarded, and also pay all costs and damages that may be adjudged against him; this bond shall be filed with the clerk of the court, and is for the use of any person injured by the proceedings.

SEC. 4. The clerk shall thereupon issue a writ of replevin directed to the sheriff, to take the property therein described and deliver the same to the plaintiff; the ordinary original notice also to be served on the defendant in the usual manner.

SEC. 5. In obedience to such writ, the sheriff must forthwith take possession of the property if in the possession of the defendant or his agents, for which purpose he may break open any dwelling house or other inclosure, having first demanded entrance and exhibited his authority if required.

SEC. 6. If a third person claim the property, he must be made a co-defendant.

SEC. 7. If the property sought be not obtained, the plaintiff, if he establishes his right thereto, shall recover the value of that right, whether obtained or not, he shall recover the damages he has sustained in consequence of the legal detention thereof.

SEC. 8. If the plaintiff fail to establish his right to the property, the defendant shall recover such damages as under the circumstances he shows himself entitled.

SEC. 9. Justices of the Peace shall have jurisdiction of action and remedies under this act, in cases where the value of the prop-

erty in dispute does not exceed two hundred dollars, under the same rules and regulations as other cases, and subject to appeal under the same rules.

Approved November 25th, 1859.

CHAPTER IX.

AN ACT

For Districting the Territory.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:—* That the counties of St. Vrain, Jackson, Heele, Cheyenne and North, be and the same are hereby declared to be the first council district, and entitled to one member of the council.

SEC. 2. The county of Jefferson is hereby declared the second district, and is entitled to one councilman.

SEC. 3. The county of Arrappahoe is the third district, and is entitled to two councilmen.

SEC. 4. The counties of Fountain and El Paso are the fourth district, and entitled to one councilman.

SEC. 5. The counties of Park and Saratoga are the fifth district, and entitled to one councilman.

SEC. 6. The county of Mountain is the sixth district, and entitled to two councilmen. Said county may be subdivided by the county court, and each subdivision may have one councilman.

SEC. 7. The counties of St. Vrain, Cheyenne, Heele, and North, be and are hereby created into Representative district number one, and entitled to one representative.

SEC. 8. The county of Jackson is hereby made to be district number two, and has one representative.

SEC. 9. The county of Jefferson is hereby made district No. three, and entitled to three representatives.

SEC. 10. The county of Mountain is entitled to six representatives, and is number four—provided that upon petition from the people, the county court may subdivide said county into subdivisions and apportion one representative to each subdivision.

SEC. 11. The county of Arrappahoe is entitled to four representatives, and is district number three, and may be subdivided by the county court into four subdivisions, and one representative to each subdivision.

SEC. 12. The county of Saratoga is entitled to two representatives, and is district number six, and may be subdivided by the county court, and apportion one representative to each subdivision.

SEC. 13. Park county is entitled to two representatives, and is district number seven, and may be subdivided by the county court, and one representative apportioned to each.

SEC. 14. El Paso county is entitled to one representative, and is district number eight.

SEC. 15. Fountain county is entitled to one representative, and is district number nine.

SEC. 16. The general annual election of the Territory shall be held on the first Monday of October, A. D. 1860, and annually thereafter.

SEC. 17. The members of the Council and House of Representatives of this Territory, shall be elected on the first Monday of October, A. D. 1860, and annually thereafter.

Approved December 7th, 1859.

CHAPTER X.

AN ACT

Defining the Boundaries of Counties and for other purposes.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:—*That a county to be called Cheyenne, be and is hereby erected, including that portion of territory lying within the following limits: commencing in the main channel of the south fork of the Platte River, where the 104th meridian of west longitude crosses the same, thence north with said 104 meridian of longitude to where the same crosses Lodge Pole Creek, thence west up the main channel of said creek to the summit of the Black Hills; then south upon the summit of said Hills to the north west corner of Heele county, thence east along the north line of said county to its north east corner; thence south to the Cache La Poudre Creek, thence south down the main channel of said creek to its junction with the South Platte River, thence down the main channel of the Platte to the place of beginning.

SEC. 2. *Be it further enacted,* That the territory comprised within the following limits, be erected into a county called St. Vrain's: commencing in the main channel of the south fork of the Platte River, where the 104th meridian of west longitude crosses

the same, thence up the main channel of said stream to the mouth of the Cache la Poudre, thence up the main channel of the Cache la Poudre to the east line of Heele county, thence south to the 40th parallel of north latitude; thence east on said parallel to the 104th meridian of west longitude, thence north on said meridian to the place of beginning.

SEC. 3. *Be it further enacted*, That the territory comprised within the following limits, be erected into a county to be called Arrappahoe county: commencing at a point where the 40th parallel of north latitude crosses the 104th meridian of west longitude; thence west on said parallel to the centre of the main channel of the south fork of the Platte River, thence upon the main channel of said stream to the mouth of Clear Creek; thence up the main channel of Clear Creek to the mouth of Ralston's Creek; thence in a straight line to a point where Montana Creek joins the main channel of the Platte; thence up the main channel of said stream to the mouth of the canon at the base of the mountains, thence on the main divide between the waters of the Arkansas and the Platte River, to where the 104th meridian of longitude crosses the same, thence north on said meridian to the place of beginning.

SEC. 4. *Be it further enacted*, That the territory comprised within the following limits be erected into a county to be called El Paso county: commencing in the main channel of the south fork of Platte River, at the south west corner of Arrappahoe county, thence easterly on the main divide between the head waters of the Arkansas and Platte Rivers twenty-five miles; thence south seventy-five miles; thence west to the summit of the Rocky Mountains; thence northwardly on the said range to the south Platte River, thence down the main channel of said stream to the place of beginning.

SEC. 5. *Be it further enacted*, That the territory lying south of the main divide, between the headwaters of the Arkansas and the south Platte River, and lying east of the summit of the Rocky Mountains, and not included in El Paso county, be erected into a county to be called Fountain county.

SEC. 6. *Be it further enacted*, That the territory comprised within the limits of what is known as the South Park, be erected into a county to be called Park county.

SEC. 7. *Be it further enacted*, That the territory comprised within the limits of what is known as the Middle Park, be erected into a county called Saratoga.

SEC. 8. *Be it further enacted*, That the territory comprised within the limits of what is known as the North Park, be erected into a county to be called North county.

SEC. 9. *Be it further enacted*, That the territory comprised within the following limits, be erected into a county to be called Jefferson: commencing at a point on the 40th parallel of north latitude where it is crossed by the main channel of the south fork of the Platte River, thence up the main channel of said stream to the mouth of Clear Creek, to the mouth of Ralston's Creek; thence in a straight line to the point where the main channel of Montana Creek joins the south fork of the Platte, thence up said river to the mouth of the canon at the base of the mountains; thence west eight miles; thence north to where said line would intersect the south line of Jackson county; thence east to the south east corner of said Jackson county, thence north to the 40th parallel, thence east to the place of beginning.

SEC. 10. *Be it further enacted*, That the territory comprised within the following limits, be erected into a county to be called Jackson; commencing at a point on the 40th parallel, known in the field notes of the government surveys as the south east corner of Town 1, Range 1, North, 69 West of the 6th principal meridian, thence running south nine miles, thence north to the 40th parallel, thence west to the South Range, thence north 18 miles, thence to the north east corner of Town 3 North Range 69 West; thence south to the place of beginning; and also that the county seat be permanently located at Boulder City.

SEC. 11. *Be it further enacted*, That the territory comprised within the following limits, be erected into a county to be called Heele: commencing at the south east corner of Town Range 4, North 69 West; thence north to the north east corner of Town 69 West Range 10 North, thence west to the summit of the Rocky Mountains; thence southwardly to the north west corner of Jackson county; thence east to the place of beginning.

SEC. 12. *Be it further enacted*, That the territory lying south of the 40th parallel and not comprised within the limits of Park, Saratoga, Jefferson, or Jackson counties, be erected into a county to be called Mountain county.

Approved November 28th, 1859.

CHAPTER XI.

AN ACT

To provide for the Organizing of Precincts and electing the Officers thereof.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving*:—It shall be the duty of the County Courts in their

respective counties, at the first term of said court, to lay off their county into as many precincts as in their judgment they may deem necessary for the convenience of the inhabitants of such county and the promotion of the public interest, and shall cause the same to be entered upon the records of such court.

SEC. 2. Said court shall at the same time, order an election to be held in each precinct thus established in their county, for the purpose of electing two Justices of the Peace and two Constables for such precinct, and shall name a day on which such election shall be held, and the place for holding the same, and shall appoint three Judges of Election for each precinct.

SEC. 3. It shall be the duty of the Clerk of such Court to make out a certified copy of such order, together with a statement showing the boundaries of such precincts and place the same in the hands of the Sheriff of his county within three days after the adjournment of such court.

SEC. 4. It shall be the duty of such sheriff to notify each of such judges of their appointment by delivering to them a true copy of such order, or by leaving the same at their usual place of abode with some member of his family over the age of fourteen years at least three days previous to the day on which such election is to be held, and it shall be the further duty of the sheriff to give notice of such election by putting up copies of such order in at least three of the most public places in each precinct, where any such election is to be held, at least ten days before the day of such election.

SEC. 5. Such election shall be held and conducted in all respects as is provided for all general elections.

SEC. 6. Whenever any portion of the citizens of any county may desire the organization of a new precinct, they may apply to the county court of the county in which such new precinct is desired, by a petition signed by at least twelve householders of the county.

SEC. 7. Whenever such petition shall be presented to the County Court, said court shall take the matter under consideration, and if it shall appear to the satisfaction of said court that the convenience of the citizens of the county require such new precinct, and that the public interests will not be materially injured thereby, they shall order that the same be organized and cause the boundaries of such precinct to be entered upon the record of said court.

SEC. 8. Whenever any new precinct shall be organized, the Court shall provide for the election of Justices of the Peace and Constables for such precinct in the same manner prescribed in laying off and organizing original precincts.

SEC. 9. Whenever it shall appear to the satisfaction of the

County Court that it is the wish of the citizens of any portion of their county to have mining districts laid off, and that the same will not be detrimental to the public interests, they shall proceed to lay off such districts, and provide for the election of such officers as may be required by law for such mining districts in the same manner as provided for the laying off of precincts and electing the officers thereof.

Approved December 2d, 1859.

CHAPTER XII.

AN ACT

Organizing County Courts and Defining their Jurisdictions.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That immediately after the adjournment of the present session of the Legislature, the Governor shall appoint for each county of the Territory one County Judge, who shall be a resident of the respective county for which he was appointed, who shall hold his office until his successor is elected and qualified.

SEC. 2. The County Judge so appointed, shall on the second Monday of December 1859, divide his county into convenient election precincts, and appoint three qualified electors Judges of election for each precinct, who shall regulate the elections and appoint the clerks thereof, and shall post up notices for the election on the first Monday of January 1860, and shall also canvass the votes cast at said election and send an abstract thereof to the Judge within five days, and the said judge shall canvass said election returns and give certificates of election to the persons having the highest number of votes.

SEC. 3. On the first Monday of January 1860, there shall be elected in each organized county, one County Judge who shall hold his office three years, and two Associate Justices who shall hold their offices as follows, viz:—the one receiving the highest number of votes for two years, and the one receiving the second highest number of votes for one year, unless sooner removed from office—provided that the year shall be construed to close at the first general election of the current year, at election the office shall be again filled for the three succeeding years.

SEC. 4. The County Judge and the two Associate Justices shall constitute the County Court, the Judge being the presiding officer thereof; but any two of said board shall be a quorum for the transaction of business.

SEC. 5. The regular terms of the County Court shall be held at the county seats of their respective counties, on the first Monday of January, March, May, July, September, and November of each and every year, and such other adjourned and special terms as the law and the necessities of business may require for its prompt transactions.

SEC. 6. The County Court shall have jurisdiction of all county business and all matters relative to probate of wills, administration of estates, appointment of guardians, wards and such other jurisdiction as is conferred by this statute.

SEC. 7. The County Court shall act as the general accounting agent of the county, and as such is authorized and required,

First: To take the management of all county business and care and custody of all county property, except such as is by law placed in the custody of another officer.

Second: To audit and settle all claims for money against the county, to draw all warrants on the Treasurer for money to be paid out of the county Treasury.

Third: To audit and settle the accounts of the Treasurer and those of any other collector and receiver of the county revenue, taxes or incomes, payable into the county treasury, and those of any other person entrusted to expend any money of the county, and to require them to render their accounts as directed by law.

Fourth: To keep a distinct account with the Treasurer of the county for the term for which he may hold said office, commencing from the day on which the Treasurer became qualified, and continuing in the same until the same or another person is qualified as Treasurer, in which account the court shall charge the Treasurer with all sums paid him, and for which he is accountable to the county, and shall credit him with all orders returned and cancelled, with vouchers presented by him, with all money or other funds paid over to his successor, and with all other matters with which he is to be credited.

Fifth: To provide the necessary books and records for the use of the county, and see that a true record of the proceedings, orders and decisions of the court are kept by the clerk.

Sixth: To institute and prosecute all actions for the benefit of the county, and defend all cases in behalf of the county.

Seventh: To keep an account of the receipts and expenditures of the county, and on the first Monday in October, annually, cause a minute statement of them for the preceding year to be made out, with an account of all debts payable to, and by the county; and shall cause the same to be filed with the county records.

Eighth: To provide the necessary rooms, books, stationery, fur-

niture and fuel for the use of the county officers, and rooms and fire for the use of the district court at the expense of the county.

SEC. 8. The members of the board of the county court shall not act as attorneys or counsellors in any business which may come before them in their official capacity.

SEC. 9. The county court shall have authority to provide for the erection and reparation of court houses, jails and other necessary buildings within and for the use of the county, and such authority in relation to roads, highways, bridges, ferries, and the poor, as are or may be given it by law. It shall determine the amount of tax to be levied for county purposes, according to the provision of law in force at the time, and cause the same to be collected, and shall have the care of county property, and shall from time to time inspect county buildings and provide for their safety.

SEC. 10. All questions in the county court shall be tried by the court, unless it is expressly provided otherwise by law.

SEC. 11. The county court shall have power to make probate of wills, to grant letters of administration of the estate of all persons who, at the time of their death were residents of the county, or who die non-resident of the Territory, leaving property to be administered upon within the county, or where such property is afterward brought into the county, and it has jurisdiction in all matters relating to the settlement of such estates.

SEC. 12. It may also appoint guardians for minors and others requiring guardians, residing within the county, in cases prescribed by law, and may exercise a supervision over their persons, property and interests.

SEC. 13. When a case is originally within the jurisdiction of the courts of either two or more counties, that court which first takes cognizance thereof by the commencement of proceedings, can retain the same throughout.

SEC. 14. No bond relating to probate matters required by law, to be given and filed in the county clerk's office, shall be deemed sufficient until approved by the court, and its approval, with the date thereof, shall be endorsed thereon.

SEC. 15. An appeal is allowed where the amount in controversy exceeds twenty dollars, except when otherwise expressed, from all decrees and decisions of the county court on the merits of any matter affecting the rights or interests of individuals, as distinguished from the public, including all intermediate orders involving the merits, and necessarily affecting the decree or decision. The appeal shall be taken within ten days from the day on which the decision was made, and shall be taken by claiming the appeal

and filing in the county clerk's office a bond, with one or more sureties, in a penal sum, to be approved by one of the county board or the county clerk, which approval shall be endorsed thereon, and with a condition in substance as follows: "That the appellant will prosecute the appeal with effect; that if the appeal be dismissed, or judgment below affirmed, he will comply with the judgment and orders made by the court below, and that he will pay all costs and sums of money which may be adjudged against him in the court appealed to, and will comply with the orders of that court. But the appeal shall be taken to the next term of the district court in the county; if there be ten days between the day when the judgment was rendered by the county court, and the day of the sitting of the district court, and the matter shall stand for hearing at the time, if required by the appellee, subject to the ordinary rules of practice.

SEC. 16. Within five days from the day on which the appeal is perfected, the county clerk is required to file a transcript of the proceedings in the matter in which the appeal is taken, authenticated by the seal of the county, with the clerk of the district court, who shall enter the same among the causes pending in that court.

SEC. 17. If more than one person be concerned in the matter of the decision from which the appeal be taken, any number of them may make the appeal as above provided for, but, if the nature of the case admit of it, the decision may be carried into effect as it regards those who do not join in the appeal bond.

SEC. 18. In all cases in which the County Court is empowered to render judgment for a sum of money or costs, that court may issue execution against the property of the person against whom judgment is, and have the same enforced by the Sheriff of the county in all respects as if it were a judgment rendered in the District Court.

SEC. 19. Transcripts of the records and copies of the record pertaining to the County Court, shall be certified and signed by the clerk of the County Court, under seal of said court.

SEC. 20. There shall be one county clerk elected at the time and in the same manner as the first county Judge who shall hold his office for one year, and shall take the usual oath of office, and give bond to be approved and filed with the Recorder.

SEC. 21. It shall be the duty of the County Clerk to keep a correct and minute record of all the proceedings and doings of the County Court; keep and preserve with care all books, papers, furniture, and the seal to all certificates, acknowledgments, and certified copies of the record; he shall if required by the County Court, make out the tax book and assist the court in making out the account of receipts and expenditures of the county; and do such other acts as are required by said court and the laws of this

Territory, shall hold his office at the county seat, and may appoint a deputy.

SEC. 22. The records of the County Court shall be kept in separate books, probate matters being in one, and county matters in another.

SEC. 23. The Clerk may acknowledge conveyances and administer oaths.

Approved December 6th, 1859.

CHAPTER XIII.

AN ACT

Providing for the Election of County Officers, and other Purposes.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That the Governor shall issue his proclamation calling an election in the various counties of this Territory on the first Monday of January, A. D. 1860, for the election of the following county officers in each county in the Territory, unless otherwise expressly provided for by law: for one sheriff, for one County Recorder, for one County Treasurer, for one County Attorney, for one Assessor, for two Justices of the Peace and for two Constables.

SEC. 2. That he shall also require the voters of the different counties, to vote at said election for the location of their county seat, and the place receiving the highest number of votes shall be declared the temporary seat of Justice for said county in the respective counties in which they are situated.

SEC. 3. The return of said election shall be made to the (president) Judge of the County Court, appointed by the Governor, who shall canvass the votes in connection with two other citizens whom he may select for that purpose, and issue certificates of election to those entitled to the same.

SEC. 4. The returns shall be made to the board of canvassers within five days after the day of election, and the return shall be canvassed by said board in ten days after the day of election.

SEC. 5. The legal voters of said election shall be the white male citizens of the county over the age of twenty-one years, and shall have a residence in the county at least ten days before the election.

SEC. 6. There shall be an election holden in the various counties in this Territory, on the first Monday in July, A. D. 1860,

for the permanent location of their county seats, and the place receiving a majority of all the votes cast, shall be declared the permanent county seat, provided that should none of the places voted at the first election, receive a majority of all the votes cast, then the two places receiving the largest number of votes, shall be the places voted for at the next election which shall be holden on the first Monday in August, 1860, and the place receiving the highest number of votes, shall be declared the permanent county seat of said county.

SEC. 7. Said canvass shall be made in each county by the board of canvassers, at such place as may be designated by the Governor in his proclamation for the election.

Approved December 7th, A. D. 1859.

CHAPTER XIV.

AN ACT

Establishing the office of County Treasurer.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That there shall be elected by the voters of each county within the Territory, at the first election held in the county for county officers, a county Treasurer, who shall hold his office during good behavior, or until removed or suspended by due course of law, who shall perform such duties as may be enjoined by law.

SEC. 2. No person shall be eligible to the office of county treasury who has not been a resident of the county at least three months, and who is at the time of election a resident householder of the county, and a legal voter therein.

SEC. 3. It shall be the duty of the county treasurer to keep his office at the county seat of his county, to receive into the treasury all moneys that may be paid to him for county purposes, and to give duplicate receipts for the same to the officer or person paying the same, which receipt shall state the amount received, the time of receiving, and on what account the sum was collected and paid over, and by whom paid; and it shall be the further duty of such treasurer to safely keep all the moneys paid to him, subject to the order of the county court, and to pay the same out on the warrants of the county court, signed by the president, and attested by the clerk of said court, and in no other way.

SEC. 4. Whenever any such county warrant shall be presented

to the treasurer, it shall be his duty to pay the same out of any money in the treasury belonging to the fund on which such warrant is drawn; and in case there is no money in his hands belonging to such fund, he shall endorse on such warrant the time of presentation, and that it is not paid for want of funds.

SEC. 6. It shall be the duty of the county treasurer to keep regular and just accounts of all the business of his office, and shall present and exhibit statements or settlements of the same to the county court, at such time as said court may direct, and shall at all times obey all rules or orders of such court in regard to the duties of his office, and in default thereof, may be punished by such court for contempt, by fine not exceeding one hundred dollars.

Approved December 3d, 1859.

CHAPTER XV.

AN ACT

To provide for the appointment of Notaries Public—Defining their Powers and Duties.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That Notaries Public shall be appointed and commissioned by the Governor upon a certificate of qualifications and good moral character from the clerk of the district court, countersigned by the judge of the district court of the respective counties, and who shall hold their office for two years.

SEC. 2. Before entering upon the duties of the office, each notary public shall file in the office of the clerk of the district court, to be approved by him, an official bond in the penalty of five hundred dollars, payable to the Territory of Jefferson, on the back of which bond shall be drawn his oath of office, which he shall take and subscribe before said clerk, which bond and oath shall be recorded by the recorder of the respective counties, and also shall have procured an official seal which will distinctly stamp upon paper the following words: (Name), Notarial Seal, — County, Jef. Ter.

SEC. 3. All notaries shall have power throughout their respective counties,

First: To make protest of all notes, bonds, orders, bills of exchange, and certify the same, and do all other acts which, by the customs of merchants, they are authorized to do.

Second: To take and certify all acknowledgments of deeds or other instruments of writing required or authorized by law.

Third: To administer oaths generally, and to take and certify affidavits and depositions, all of which must be attested by his official seal.

SEC. 4. The official certificate of a notary public attested by his seal, shall be presumptive evidence of the facts therein set forth, and shall be received in evidence in the courts of the Territory, in cases authorized by section three.

SEC. 5. Notaries shall receive the following fees: Making and entering each protest, three dollars; for acknowledging each deed or other instrument, one dollar; for administering each oath, twenty-five cents.

Approved November 29th, 1859.

CHAPTER XVI.

AN ACT

For the Establishing, Opening, and Repairing of County Roads and Highways.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—All county roads shall be established, located, opened, and repaired, according to the provisions of this act.

SEC. 2. The County Court shall have power to make and enforce all orders necessary as well for the establishment and opening new roads as to change or vacate any county road, or any part thereof in their respective counties.

SEC. 3. All county roads shall be cut out not less than twenty nor more than forty feet wide, to be determined from time to time by the County Court ordering the establishing and opening the same according to the supposed utility of such road.

SEC. 4. All county roads shall be cleaned of trees which may incommode horsemen or carriages, and no stump in any county road shall exceed eight inches in height, and wet grounds and small water courses shall be causewayed and bridged in such manner as to enable horsemen and carriages to pass in safety.

SEC. 5. No bridge shall be built by the overseer and hands, the building of which shall be worth more than one hundred dollars.

SEC. 6. Application for new county roads shall be made by petition signed by at least twelve householders of the precinct or

precincts through which such road is designed to run, three of whom shall live in the immediate neighborhood, specifying the proposed beginning, course and termination thereof, with not more than two points named in such petition on the direction of said road.

SEC. 7. The court when such petition is presented, shall appoint three disinterested householders of the county as commissioners.

SEC. 8. The clerks of such courts shall within ten days after the appointment of such commissioners, deliver to the sheriff of the county a copy of the order of such appointment, with an endorsement thereon of the time of delivery.

SEC. 9. The Sheriff shall within ten days thereafter, notify the persons appointed by delivering to each of them a copy of such order or by leaving such copy at the usual place of abode of such commissioners, with some member of his family over the age of fifteen years.

SEC. 10. The Sheriff shall return the original order of appointment to the clerk who delivered it to him, with his certificate thereon, showing how he executed the same, before the next regular term of the court.

SEC. 11. The commissioners, or a majority of them, having taken an oath or affirmation faithfully and impartially to discharge their duties, shall proceed to view the route proposed, and to lay out and mark such road on the best ground that can be obtained, not running through any person's enclosure without the owner's consent, unless a good way cannot otherwise be had.

SEC. 12. The commissioners, or a majority of them, shall report a certified copy of their proceedings to the next regular term of said court, and if the court is satisfied that said road will be of public utility, and that it will not be burdensome on the citizens to open said road, and keep the same established and opened in pursuance of the provisions of this act.

SEC. 13. Any person wishing to cultivate lands through which any county road may run, may petition to the County Court, or any member thereof, in vacation for permission to turn the same at his own expense.

SEC. 14. The County Court or member to which such petition is made, shall thereupon appoint three disinterested householders as commissioners, who shall after having taken oath or affirmation to discharge the duty faithfully and impartially, proceed to view the same, and shall report their proceedings to the next regular term of said court.

SEC. 15. If upon such report the court is satisfied that the public will not be materially injured by such change, it shall order the same, and upon satisfactory proof of such road being opened in such manner as to be equally convenient to travelers, the court

shall make an order vacating so much of the old road as lies between the different points of intersection, and order the report of the commissioners recorded, provided, however, that all costs incurred in making such change, shall be paid by the persons petitioning for such change.

SEC. 16. The county court of each county shall as often as it may become necessary, appoint one or more justices of the peace in each township in the county, whose duty it shall be to lay off the several county roads therein, into road districts of convenient lengths, numbering them, and make returns of such divisions with their numbers, to the next regular term of the court after their appointment.

SEC. 17. It shall be the further duty of such justices to allot the hands subject to work on roads among the overseers of the road districts.

SEC. 18. Such justice shall be notified of his appointment as allotting justice in the same manner as is provided for notifying commissioners, in the eighth and ninth sections of this Act.

SEC. 19. The County Court shall at their first term after the return of the justices appointed to make road divisions and districts, appoint some suitable person, being a householder, and living on or near such road divisions, to oversee the opening and repairing the same, who shall hold his office one year (unless sooner disqualified or removed) and until he informs said court of his intention to serve no longer, and satisfies the court that his road is in good order.

SEC. 20. The clerk of the county court shall, within four days after such appointment, make out a copy of the same, and place it in the hands of the sheriff of the county, with an endorsement thereon of the time of delivering.

SEC. 21. The sheriff shall, within ten days after receiving such copy of order of appointment, serve such overseer with a notice thereof, by giving a copy or by leaving such copy at the usual place of abode, or with some member of his family over the age of fourteen years, and make return of such service to said court at its next term.

SEC. 22. Such overseer shall immediately, on receiving his appointment, apply to the allotting justice of his township, for a list of hands to work his road division, such justice shall at all times have due regard to the length of the road division, the probable amount of labor necessary on the same, and the right and justice of the whole matter.

SEC. 23. Such justice or justices shall immediately thereafter, make out and return a certified list of all such allotments by him or them made, to the clerk of the county court, who shall file the same in his office.

SEC. 24. No person shall be required to work on more than one

road division during the same year, except in cutting out new roads.

SEC. 25. Each justice or justices as may have been appointed to lay off road divisions and allot hands, may, whenever to them it may seem just and expedient, alter any road division in their township, and re-allot the hands so as to equalize the labor of opening and repairing the same, and shall immediately report such change to the clerk, to be filed in his office.

SEC. 26. The justice or justices appointed to lay off roads and districts, and allot hands, shall hold their office and perform such for one year, and until he or they inform the county court of their intention to serve no longer, in which case some other justice shall immediately be appointed to perform that duty.

SEC. 27. All able bodied male inhabitants between the ages of sixteen and forty-five, having resided in the road district one month, shall be required to work on county roads.

SEC. 28. As often as any road division need opening or re-opening the overseer shall call out the hands allotted to him, and oversee, open and repair the same.

SEC. 29. A verbal notice to any hand, or if a son residing with his father, to his father, by such overseer himself, or by any person having a written authority from such overseer, or a written notice, left at the place of abode of the party, with some member of the family over the age of fourteen years, shall be sufficient.

SEC. 30. Every person made liable to work on a road, who fails, without reasonable excuse, to attend either in person or by satisfactory substitute, with proper tools or instruments, having had two days previous notice thereof; or, having attended, shall disobey the reasonable orders of the overseer, shall forfeit and pay the sum of two dollars for each and every day he fails to attend and work with diligence, to be recovered by action of debt in the name of such overseer, before any justice of the peace in the Territory.

SEC. 31. Every person who shall, at the request of the overseer of his road district, furnish a plow, cart or wagon, with a pair of horses, mules or oxen, and driver, shall receive such credit on his road tax or in money, as he and the overseer may agree upon.

SEC. 32. Every overseer shall erect and keep a post at every fork of the road or cross road in his road district, unless a suitable tree be found at the proper place, to which shall be affixed a finger board containing a legible inscription, directing the way and noticing the direction to the next remarkable place on the road.

SEC. 33. Every such overseer shall be entitled to the sum of two dollars for every such post or sign so erected, to be paid out of any money in hand belonging to his road district, or out of any money in the county treasury arising under this act.

SEC. 34. If any person shall obstruct any county road unnecessarily, and to the hindrance of any passenger, such person shall forfeit and pay a sum not exceeding twenty dollars, and one dollar additional for every day he shall suffer such obstruction to remain in or across the road.

SEC. 35. If any person shall demolish or deface any finger board, or take the same away, he shall forfeit and pay ten dollars, to be recovered by action of debt to the use of the county.

SEC. 36. If any road overseer shall wilfully fail or neglect to keep his road in good repair, or to put up a finger board, or faithfully appropriate any money in his hands to the use of his road division, or in any manner fail to comply with the requirements of this act, or refuse to serve when appointed road overseer, he shall forfeit and pay the sum of ten dollars.

SEC. 37. If any clerk of a county court, sheriff or justice of the peace shall fail to perform the duties required of him by this act, he shall forfeit and pay not less than ten nor more than fifty dollars for each offense, to be recovered by action of debt to the use of the county.

SEC. 38. Any overseer receiving any money under this act, shall faithfully apply the same to the use of his road division, and shall make settlement of his account with his road division with the county court once in each year, and any other officer receiving any money under the provisions of this act, shall forthwith pay the same into the county treasury, and take the treasurer's receipt for the same, and file it with the clerk of the county court, who shall charge the treasurer with the amount of such receipt.

Approved November 5th, 1859.

CHAPTER XVII.

AN ACT

Providing for the raising of Revenues, and Collecting the same.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—For the support of the Government of the Territory, and the general advancement of the public interest, a tax shall be levied upon the following objects:

First: All male persons over twenty-one and under fifty-five years of age.

Second: All buildings or other improvements on land or town

lots, except churches, school houses, cemeteries, and territory and county buildings.

Third: Carriages, wagons, carts, or other vehicles of transportation.

Fourth: Horses, mares, geldings, neat cattle, mules and asses, above one year old.

Fifth: Money actually invested in shares of incorporated companies.

Sixth: All licenses taxable by law, granting the same.

SEC. 2. The annual tax levied upon the subjects mentioned in the foregoing section, shall be at the following rates:

First: All male persons over the age of twenty-one and under fifty-five years of age, one dollar.

Second: On all property mentioned in the foregoing section, one fourth of one per cent of the assessed value thereof.

SEC. 3. The rates of taxes upon all licenses subject to taxation, are declared under their appropriate titles.

ARTICLE SECOND.

OF ASSESSMENT OR PROPERTY FOR TAXATION.

SEC. 1. A county assessor shall be elected at the time and in the same manner of electing other county officers.

SEC. 2. The clerk of the county court shall deliver to the person thus elected, immediately after the election, a certificate of his election, the seal of said court.

SEC. 3. Every assessor shall, before entering upon the duties of his office, take an oath that he will support the Constitution of the United States and the Organic Act of the Territory of Jefferson, and faithfully perform the duties of his office according to law; and in default thereof, he shall forfeit one hundred dollars to the use of the territory, to be recovered by action of debt.

SEC. 4. Every assessor before entering upon the duties of his office shall give bonds and security to the satisfaction of the county court, in a sum not less than one, nor more than five hundred dollars the amount to be determined by the said court, conditioned for the faithful performance of the duties of his office, which bond shall be deposited in the office of the clerk of the county court.

SEC. 5. The assessor shall commence assessing on the 15th day of June, A. D. 1860, and proceed to assess all the objects of taxation within his county, by visiting each male citizen subject to a poll tax, or such person owning property subject to taxation, and shall obtain from them a list of their taxable property.

SEC. 6. It shall be the duty of all persons liable to tax in the county, to furnish the assessor, when called on by him, a full and complete list of their taxable property.

SEC. 7. If any person fail or refuse to furnish such list of their property when so applied to, the assessor shall make out such list from personal examination or the best information he can obtain, and for that purpose he shall have lawful right to enter into any houses, tents, wagons, or premises whatever, and make any examination or search which may be necessary, and may examine the owners of the property upon oath touching the same.

SEC. 8. Persons owning shares of stock in incorporated companies, taxable by law, are not required to furnish the assessor with a list thereof, but the president or other chief officer of such corporation, shall furnish the assessor a list of all shares of stock held therein, and the amount of money or its equivalent, which has been paid thereon.

SEC. 9. The taxes assessed on shares of stock embraced in such list, shall be paid by the corporate company, and such company may collect from the owners of such shares, the amount so paid by them, or deduct the same from the dividends accruing on such shares, and the amount so paid shall be a lien on such shares respectively, and shall be paid before a transfer thereof can be made.

SEC. 10. The assessor shall from the lists delivered to him, and obtained by personal observation or otherwise, make out a complete list of all taxable property together, the names of persons subject to poll tax within his county, to be called the county tax book.

SEC. 11. The tax book shall contain, in alphabetical order, the names of all persons to whom property has been assessed therein; it shall be in tabular form, with a suitable caption, and separate columns for the names of the owners, each kind of property taxed, the assessed value of each kind, and the whole amount chargeable to each person, and such other columns as may be found necessary and convenient in practice.

SEC. 12. The assessor shall make out and return to the clerk of the county court, on or before the 15th day of July, A. D. 1860, a fair copy of the tax book.

SEC. 13. The County Courts shall meet at their respective county seats on the third Monday of July, A. D. 1860, and hold a court to be called the court of appeals from the assessor's book.

SEC. 14. The tax book shall remain in the office of the clerk of the county court, from the time it is returned until the setting of next court of appeals, opened for the inspection of all concerned.

SEC. 15. Every person who thinks himself aggrieved by the assessment of his property, may appeal, and every appeal shall be

in writing, and shall state especially the ground of the appeal, and the matter or thing complained of, and no other matter shall be considered by the court.

SEC. 16. If from any cause, a session of the County Court cannot be had within five days of the time above specified, the clerk of the county court shall take to his assistance any two justices of the peace of the county and hold a court of appeals, first giving notice thereof by written or printed notices, to be set up by the sheriff in at least six of the most public places in the county.

SEC. 17. The court of appeals shall hear and determine all appeals in a summary way, and shall adjust and correct the tax book accordingly.

SEC. 18. As soon as the tax book shall be adjusted and correct, and the tax stated thereon, the clerk of the county court shall make out a fair copy thereof, authenticated by the seal of the court, for the use of the collector.

SEC. 19. The clerk shall at the same time, make out, certify, and authenticate by the seal of the court, an aggregate abstract of the tax book, placing each kind of property under its appropriate head, with the aggregate value thereof, and the aggregate amount of taxes thereon.

SEC. 20. When any fact, matter, or thing, is required by this article to be verified by oath or affirmation, the assessor may administer the same.

SEC. 21. If no person should be elected as provided for in the first section of this article, or if the person elected fail to take the oath and enter into bonds, as required of assessors, on or before the first day of June, A. D. 1860, or if at any time there be a vacancy in the office of assessor, then in either case it shall be the duty of the court to appoint some suitable person to fill the vacancy for that year.

SEC. 22. Every assessor who shall fail to perform any duty enjoined on him by this act, in the time prescribed, may be removed from office and another one put in his stead by the county court, and when removed, his bond may be put in suit.

SEC. 23. The compensation of the assessor shall be five dollars for each day he may be engaged in the performance of the duties of his office, and half of which shall be paid out of the county treasury, and the other half out of the treasury of the Territory.

SEC. 24. The county court shall cause the assessor to verify his account by oath of affirmation, and under the seal of the court, cause to be verified by the auditor, the amount to be paid by the Territory, who shall draw a warrant on the Treasury of the Territory for the same.

SEC. 25. In all cases, persons shall be liable to tax on the property owned at the time the assessment is made.

ARTICLE THIRD.

OF THE COLLECTION OF THE REVENUE.

SEC. 1. Every sheriff hereafter elected, shall be *ex officio* collector of the revenue within his county, for one year, commencing on the first day of July, 1860.

SEC. 2. Every sheriff shall, on or before the said first day of July, enter into bond with sufficient security to the Territory, to the satisfaction of the county court, in a sum at least double the amount of all the revenue to be collected by him, conditionally that he will faithfully and punctually collect and pay over all the Territorial and county revenue for the year next ensuing, and that he will in all things faithfully perform all the duties of the office of collector according to law.

SEC. 3. The bond of the sheriff as collector shall be signed by at least five solvent securities; if he fail to enter into bonds as herein specified, his office as sheriff shall immediately become vacant, and the county court shall forthwith appoint some person to fill such vacancy who will give such bonds.

SEC. 4. Such bond shall be executed in duplicate; one part thereof shall be deposited and recorded in the office of the clerk of the county court, and the other part shall be transmitted by the clerk to the auditor of public accounts.

SEC. 5. The collectors of the revenue may perform their duties by deputies, and every deputy shall have the same legal qualifications as the principals.

SEC. 6. Every deputation shall be in writing, under the hand and seal of the principal, who may revoke the same by a similar writing.

SEC. 7. The collectors shall give public notice of every deputation or revocation by putting up notice at the place of holding courts in their county.

SEC. 8. As soon as the tax book has been corrected and adjusted, and the amount of county tax stated thereon, according to law, the clerk of the county court shall deliver the same to the collector of his county, who shall give receipts therefor to the clerk and the clerk shall charge the collector with the whole amount of the tax book so delivered to him.

SEC. 9. The collector shall also subscribe a receipt for the tax book, endorsed on the aggregate abstract thereof, as required to

be made out by the clerk by the eighteenth section of the second article of this act, which abstract, with such receipt endorsed thereon and authenticated as required by the eighteenth section aforesaid, shall be transmitted by the clerk to the auditor of public accounts, on or before the first day of September, 1860.

SEC. 10. The collector shall diligently endeavor and use all lawful means to collect all taxes specified in the tax books of their respective counties, and to that end they shall have power to seize and sell the goods and chattels of the persons liable for the tax, in the same manner as goods or chattels are, or may be required to be seized and sold under the execution on judgment at law, and no property shall be exempt from seizure and sale for taxes.

SEC. 11. But no such seizure and sale of goods shall be made until the collector has demanded payment of the tax, either by personal application to the person liable to pay the same, or by visiting his place of abode for that purpose, and after the lapse of ten days without payment after such demand, except in cases of non-resident, or when the person has removed from the county, then he may proceed with such seizure and sale.

SEC. 12. When taxes are collected by sale of property, the collector shall collect, in addition to the taxes, the necessary costs of such levy and sale.

SEC. 13. The sheriffs of the several counties shall collect all fines and forfeitures and other sums of money, by whatever names designated, to the use of the Territory or any county, in virtue of any order, judgment or decree of any court of record.

SEC. 14. The clerks of the several courts of record shall keep a true account of all fines, penalties, forfeitures and judgments, imposed, adjudged or rendered in favor of the Territory or any county by their respective courts, distinguishing those payable to the Territory from those payable to the county, and shall keep the same open for the inspection of the judges of the respective courts, and the collector of revenue.

SEC. 15. The several courts of record shall at each regular term, cause the sheriffs of the respective counties to make a full and fair statement and settlement of all fines, penalties, forfeitures and judgments received by them, and not before accounted for and paid over.

SEC. 16. Whenever the courts shall make such settlements with any officer, the substance thereof shall be entered on record, so as to show separately the whole amount received by such officer; the amount of commission allowed him by law for collection; how much remains due the Territory, and how much the county, and on what account such sum of money was received, and shall order

such officer to pay the amount due the county into the county treasury, and the clerk of said court shall certify the amount found due to the Territory to the auditor of public accounts.

SEC. 17. Whenever any collector shall be unable to collect any taxes specified in the tax book, and having diligently endeavored and used all lawful means to collect the same, he shall make a list thereof, to be called the delinquent tax list, in which shall be stated the name of all persons whose taxes cannot be collected, alphabetically, with the amount due from each.

SEC. 18. The county court shall hold a special term of that court on the first Monday in September, 1860, at which term of the court the collector shall return the delinquent tax list under oath or affirmation, and with his account of all moneys received by him on account of taxes and other sources of revenue, and the amount of such delinquent list, or so much thereof as the said court shall find properly returned delinquent, shall be allowed and credited to the collector on his settlement.

SEC. 19. The court shall cause such settlement to be entered on record, so as to show the amounts due to the Territory and counties respectively.

SEC. 20. If any collector fail to make settlement in the time and manner prescribed, he may be attached until he make such settlement, to the satisfaction of the county court.

SEC. 21. Immediately after every settlement, made by any collector, with the county court, a copy of the record thereof shall be certified and transmitted by the clerk to the auditor of public accounts.

SEC. 22. The delinquent tax list allowed to any collector, shall be delivered to his successor, who shall collect the same and account therefor as for other moneys collected by him, and shall return such list to the clerk of the county court, to be delivered to his successor, and so until the whole is collected.

SEC. 23. Every collector shall, on or before the fifteenth day of September, 1860, pay into the treasury of the Territory, the whole amount of the revenue with which he may stand charged, deducting his commission, and the treasurer shall give duplicate receipts for the amount paid, one of which shall be deposited with the auditor within five days after its date.

SEC. 24. If the collector fail to deposit the revenue as required by the twenty-second section of this article, he shall forfeit to the Territory the sum of five hundred dollars, to be recovered of him and his securities on his official bond.

SEC. 25. Every collector shall receive a full compensation, in collecting the revenue commission as follows:

First: Upon all revenue collected on license, four per centum.

Second: On all sums not exceeding one thousand dollars, ten per centum.

Third: Upon all additional sums above one thousand dollars and not exceeding two thousand dollars, seven per centum.

Fourth: Upon all additional sums above two thousand dollars, five per centum, and the collectors shall be allowed ten cents for every mile they may necessarily travel in going to the seat of government and returning to their place of residence, for the purpose of paying the revenue into the Territorial Treasury, provided such compensation for mileage shall not be allowed more than once in each year.

SEC. 26. If any officer is charged with any money and shall fail to pay it over, or shall fail to perform any duty enjoined on him by this act, he shall forfeit to the Territory the sum of not less than one hundred dollars, to be recovered from him and his securities on suit on his official bond, and may be removed from office by the county court.

ARTICLE FOURTH.

OF THE COUNTY REVENUE.

SEC. 1. The several county courts are empowered to pay such sums as may be annually necessary to defray the expenses of their respective counties, by a tax upon all property and licenses made taxable by law for territorial purposes, but the county tax shall not exceed the territorial on the same subject.

SEC. 2. As soon as may be, after tax book of each county shall be corrected and adjusted according to law, the county court shall ascertain the sum necessary to be raised for county purposes, and fix the rates of tax on the several subjects of taxations so as to raise the required sum, and cause the same to be entered in proper columns on the tax book.

SEC. 3. Every collector of the revenue having made settlement according to law, of county revenue by him collected, shall forthwith pay the amount due from him, into the county treasury, and the treasurer shall give him duplicate receipts therefor, one part of which shall be filed with the clerk of the county court, and the treasurer charged therewith.

SEC. 4. Every collector who shall fail to make payment of the amount due from him on settlement in the time and manner prescribed in the preceding section, shall forfeit ten per centum a

month on the amount wrongfully withheld, to be computed from the time the payment ought to have been made until actual payment.

Approved December 2d, 1859.

CHAPTER XVIII.

AN ACT

Defining the Manner of Taking Farming and other Claims.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That any person desiring to take and appropriate a portion of the public domain for farming, ranching or other purposes of actual use, improvement, or occupation, shall pursue the course hereinafter directed.

SEC. 2. The party so desiring to take a claim shall be entitled to hold one hundred and sixty acres of land, provided the same shall be taken in one piece or body, and shall have the same surveyed and plainly staked so as to show the metes and bounds of his claim, and that the lines shall be made to conform as nearly as practicable to the cardinal points of the compass, and provided further, that no claim shall exceed one mile in length.

SEC. 3. The person surveying a claim under the provisions of this act, shall keep the field notes of such survey together with a plat, which field notes and plat shall be left in the office of the recorder of deeds in the county wherein said claim is situated, within ten days from the day on which such survey was made.

SEC. 4. The owner of such claim, within thirty days from the date of such survey, shall cause to be laid upon said claim a good and substantial foundation for a house out of wood, stone, or brick, and shall within twelve months from date of said survey, build or cause to be built, a good substantial house or cabin, and shall in addition to the above, cause fencing or plowing to be done on the same to the amount of one hundred dollars if taken for farming purposes; if taken for ranching or other purposes, in addition to the building, at least one hundred dollars worth of such improvements as will advance the interests for which the claim has been taken.

SEC. 5. That all claims taken heretofore in accordance with the rules and customs to the neighborhood or club law within whose limits they are situated, are hereby declared legal and valid, provided the claimant complies with the provisions of this act, within ninety days after its approval.

SEC. 6. That parties desiring to take claims for two purposes, shall be entitled to hold three hundred and twenty acres, and are required to have the same surveyed, platted and filed in the office of the recorder of deeds, and shall build thereon a good and substantial house, within thirty days after such survey; provided, further, that the owner of said town sites shall have the same surveyed and subdivided into such lots, blocks, streets and alleys as it is proposed to divide said town site into, within three months from the date of the original survey, and have the said town plat recorded in the office of the county recorder.

SEC. 7. All town sites heretofore taken and platted are exempt from the provisions of this bill, and are recognized as legal and valid, provided the improvements and recording required by the preceding section, are done within ninety days after this act shall go into effect.

Approved December 2, 1859.

CHAPTER XIX.

AN ACT

Concerning Irrigation.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That any person or persons settling upon any stream and claiming one hundred and sixty acres or less for farming or gardening purposes, and claiming the privilege of using the water of said stream for purposes of irrigation, shall be entitled to the same as hereinafter provided.

SEC. 2. No person or persons making subsequent claims above said first claimant, shall turn out of its original channel the waters of such stream in such a manner as to deprive said first claimant of the irrigation privileges provided in section first.

SEC. 3. That nothing in section second shall be so construed as to deprive agriculturalists remote from streams from applying the waters thereof to irrigation purposes, and they shall have the right to make the necessary dams, ditches and other improvements for that purpose, but shall be liable for damages resulting therefrom.

SEC. 4. Persons wishing to irrigate lands shall not be liable to an action of trespass for entering upon the claims of other persons, for the purpose of making a ditch and bringing water across said other person's claim; *Provided*, they shall pay all damages sustained by said other persons, to be determined by referees as in other cases.

Approved December 7, 1859.

CHAPTER XX.

AN ACT

For a General Incorporation Law.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That any number of persons may associate themselves and become incorporate for the transaction of any lawful business, including the establishment of ferries, the construction of canals, ditches, railways, wagon roads, bridges, quartz mills, tunnel or mining companies, and such other lawful enterprises as naturally persons may possess; except as hereinafter specified.

SEC. 2. Among the powers of such body corporate, are the following:

First: To have perpetual possession;

Second: To sue and be sued by its corporate name;

Third: To have a common seal, which it may alter at pleasure;

Fourth: To render the interests of the stock holders transferable;

Fifth: To exempt the private property of its members from liability for corporate debts, except as herein otherwise declared;

Sixth: To make contracts, acquire and transfer property, possessing the same powers in such respects as private individuals now enjoy;

Seventh: To establish by-laws and make all rules and regulations deemed expedient for the management of their affairs in accordance with law, and not incompatible with an honest purpose.

SEC. 3. Previous to the commencing any business, except that of their own organization, they must adopt articles of incorporation, which must be recorded in the office of the recorder of deeds of the county where the principal place of business is to be, in a book kept for that purpose.

SEC. 4. Corporations for the construction of any work of internal improvements, must also, in addition, file a copy of such articles in the office of the Secretary of the Territory, and have the same recorded by him in a book kept for that purpose.

SEC. 5. A notice must also be published for four weeks in succession, in some newspaper as convenient as practicable to the principal place of business.

SEC. 6. Such notice must contain:

First: The name of the corporation and its principal place of transacting business;

Second: The general nature of the business to be transacted;

Third: The amount of capital stock authorized, and the time and condition on which it is to be paid;

Fourth: The time of the commencement and termination of the corporation;

Fifth: By what officers or persons the affairs of the company are to be conducted, and the time at which they will be elected;

Sixth: The highest amount of indebtedness or liability to which the corporation is at any time to subject itself;

Seventh: Whether private property is at any time to be exempt from corporate debts.

SEC. 7. The corporation may commence business as soon as the articles are filed in the office of the recorder of deeds, and their doings shall be valid if the publication in a newspaper is made, and the copy filed in the office of the Secretary of the Territory, when such filing is necessary, within three months from such filing in the recorder's office.

SEC. 8. No change in any of the above matters shall be valid unless recorded and published as the original articles are required to be.

SEC. 9. Corporations for the construction of any work of internal improvement may be formed to endure as long as the laws of this government remain in force. Those formed for other purposes cannot exceed one year in duration. But in either case they must be renewed from time to time for periods not greater respectively than was at first permissible; provided three fourths of the votes cast at any regular election for that purpose be in favor of such renewal, at its fair current value.

SEC. 10. The corporation cannot be dissolved prior to the period fixed upon in the articles of incorporation, except by unanimous consent, unless a different rule has been adopted in their articles.

SEC. 11. The same period of newspaper publication, must precede any such premature dissolution of a corporation as is required at its creation.

SEC. 12. A copy of the By-Laws of the corporation with the names of all its officers appended thereto, must be posted in the principal place of business, and subject to public inspection.

SEC. 13. A statement of the amount of the capital stock subscribed, the amount of capital actually paid in, and the amount of indebtedness of the company in a general way, must also be kept posted up in like manner, which statement must be corrected as often as any material change takes place in relation to any part of the subject matter of such statement.

SEC. 14. Intentional fraud in failing to comply substantially with the articles of incorporation, or in deceiving the public, or in-

dividuals in relation to their means or their liabilities shall subject those guilty thereof to fine and imprisonment, or both, at the discretion of the court. Any person who has sustained injury from such fraud may also recover damages therefor against those participating in such frauds.

SEC. 15. The diversion of the funds of the corporation to other objects than those mentioned in their articles and in the notices published as aforesaid (provided any person is thereby injured) and the payment of dividends which leave insufficient funds to meet the liabilities of the corporation, shall be deemed such frauds as will subject those therein concerned to the penalties of the preceding section, and such dividend, or their equivalent, in the hands of individual stockholders shall be subject to said liabilities.

SEC. 16. Dividends of Insurance Companies made in good faith before their knowledge of the happening of actual losses, are not intended to be prevented or punished by the provisions of the preceding section.

SEC. 17. A failure to comply substantially with the foregoing requisitions in relation to organization and publication, renders the individual property of all the stockholders liable for the corporate debts.

SEC. 18. Either such failure or the practice of frauds in the manner hereinbefore mentioned, shall cause a forfeiture of all the privileges hereby conferred, and the courts may proceed to wind up the business of the corporation by an injunction in the manner prescribed by law.

SEC. 19. The intentional keeping of false books or accounts by any corporation, whereby any one is injured, is a misdemeanor on the part of those concerned therein, and any person shall be presumed to be concerned therein whose duty it was to see that the books and accounts were correctly kept.

SEC. 20. The transfer of shares is not valid except as between the parties thereto, until it is regularly entered upon the books of the company so far as to show the name of the persons by and to whom transferred, the numbers or other designations of the shares and the date of the transfer. The books of the company must be so kept as to show intelligibly the original stockholders, their respective interests, the amount which has been paid on their shares, and all transfers thereof, and such books, or a correct copy thereof, so far as the items mentioned in this section, are concerned, shall be subject to the inspection of any person desiring the same.

SEC. 21. Any corporation organized or attempted to be organized in accordance with the provisions of this chapter, shall cease to exist by the non-user of its franchise for two years at any one time, but such body shall not forfeit its franchises by reason of its omission to elect officers or to hold meetings at any time pre-

scribed by the by-laws, provided such act be done within two years of the appointed time therefor.

SEC. 22. Corporations whose charters expire by their own limitation or by the voluntary act of the stockholders may nevertheless continue to act for the purpose of winding up their concerns, but for no other purpose.

SEC. 23. Nothing herein contained exempts the stockholders of any corporation from individual liability to the amount of the unpaid installments on the stock owned by them or transferred by them for the purpose of defrauding his creditors and an execution against the company may to that extent be carried upon such private property of any individual.

SEC. 24. In none of the cases contemplated in this chapter can the private property of the stockholders be levied upon for the payment of corporate debts, while corporate property can be found with which to satisfy the same, but it will be sufficient proof that no property can be found if an execution was issued on a judgment against the corporation and a demand thereon made of some one of the last acting officers of the body, for property on which to levy, and if he neglect to point out any such property.

SEC. 25. The defendant in any stage of the cause, may point out corporate property subject to levy, and upon his satisfying the court of the existence of such property by affidavit or otherwise, the cause may be continued or execution against the defendant may be stayed until the property can be levied upon and sold, and the court may subsequently render judgment and order an execution for any balance which there may be after disposing of the corporate property according to the stage of the cause; but if a demand has been served as contemplated in the preceding section, the costs of such proceedings shall in any event be paid by the company, or by the defendant.

SEC. 26. When the private property of a stockholder is taken for a corporate debt, he may maintain an action against the corporation for an indemnity and against any of the other stockholders for contribution.

SEC. 27. For the purpose of repairs, rebuilding or enlarging, or to meet contingencies, if for the purpose of a sinking fund, the corporation may provide and establish a fund which they may loan, and in relation to which they may take proper securities.

SEC. 28. When the franchise of a corporation has been levied upon under an execution, and sold, the corporators shall not have power to dissolve the corporation so as to destroy the franchise, and if they neglect to keep up an organization sufficient to enable the business to proceed, the purchaser thereupon becomes vested

with all the power of the corporation requisite therefor, and when it becomes impracticable for an individual so to conduct them, and in cases where doubts and difficulties not herein provided for, arise, the purchaser may apply by petition to the District Court which is hereby vested with authority to make any orders requisite for carrying into effect the intent of this chapter in this respect.

SEC. 29. In any proceeding by or against a corporation or against a stockholder to charge his private property or the dividends received by him, the court is vested with power to compel the officer to produce the books of the corporation on a motion of either party upon a proper cause being shown for that purpose.

SEC. 30. A single individual may entitle himself to all the advantages of this chapter, provided he complies substantially with all its requirements, omitting those which from the nature of the case are inapplicable.

SEC. 31. Persons acting as a corporation under the provisions of this chapter, will be presumed to be legally incorporated until the contrary is shown; and no such franchise shall be declared actually null or forfeited except in a regular proceeding brought for that purpose.

SEC. 32. No body of men acting as a corporation under the provisions of this act, shall be permitted to set up the want of a legal organization as a defence to an action against them as a corporation; nor shall any person sued on a contract made with such corporation, or sued for any injury to its property or a wrong done to its interests be permitted to set up a want of such a legal organization in his defence.

SEC. 33. Corporations regularly organized under any laws heretofore in force, by adopting their articles of association to the provisions of this act, and by making the required publication of the change as well as their intention to act under the foregoing provisions, will be entitled to all the advantages and subject to all the liabilities above provided for, but the change in their articles of association must be made in accordance with those articles or by unanimous consent of the stockholders.

SEC. 34. Mutual Insurance Companies, organized under the provisions of this act, may tender their premium notes a lien upon the whole or any part of the real estate upon which the property insured is situated, whether such real estate is or is not exempt from other liabilities as a homestead, but such lien will not attach until the premium note stating the property on which it is a lien, is filed for record, and treated in the same manner as though it were a mortgage from the maker thereof to the company, except thereof it need be acknowledged.

SEC. 35. Nothing herein contained is intended to effect companies already organized, further than above expressed.

Approved December 6th, 1859.

CHAPTER XXI.

AN ACT

To Provide for the Incorporation of Towns.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That whenever a majority of the inhabitants of any town within this Territory shall present a petition to the County Court, setting forth the bounds of the town and the commons praying to be incorporated, and for the appointment of the officers for their municipal government, and if the court shall be satisfied that a majority of the inhabitants of said town have signed said petition, the court may declare said town incorporated, designating in such order the metes and bounds thereof; and thenceforth the inhabitants within such bounds shall be a body politic and corporate, by the name and style of the incorporated town of (naming it,) and by that name they and their successors shall be known in law; have perpetual succession, unless disincorporated; may sue and be sued; plead and be impleaded; defend and be defended in all courts of law and equity, and in all actions, pleas and matters whatsoever; such incorporated town of may grant, purchase, hold, and receive, property real and personal, within such town, and burial grounds, and cemeteries, out of such town; may lease, sell, and dispose of the same for the benefit of the town; may make a common seal, and may alter and amend the same at pleasure.

SEC. 2. Immediately upon ordering or granting the incorporation of such town, the County Court shall appoint a day for holding an election, and shall appoint two judges and one clerk for such election, and return of which shall be made to the county clerk who shall canvass the same, and issue certificates to the persons elected. Provided that all subsequent elections shall be conducted as hereinafter provided.

SEC. 3. The corporate powers and duty of every town so incorporated, shall be vested in one Mayor, four Councilmen, one Treasurer, and one Constable, who shall hold their office until the first Monday of March following, and until their successors are elected and qualified.

SEC. 4. The qualifications of these officers shall be those required of county officers, and shall be residents of the town.

SEC. 5. Before entering upon the duties of their respective offices, every officer provided for in this act, shall take an oath to support the Constitution of the United States and the laws of this Territory, and faithfully to discharge the duties of his office, and shall give bond to the use of the town in the sum of one thousand dollars, to be approved and filed with the clerk except his own bond, which shall be filed with the President.

SEC. 6. The Town Council at any regular meeting, shall have power to elect a Mayor pro tem. in the absence of their president, to elect a Clerk of their board, an Assessor and a Collector, prescribe their duties and fix their compensation, each of which may or may not be, one of their number.

SEC. 7. The Town Council may fix by law the time and place of their regular meeting.

SEC. 8. At all meetings, a majority of the board of the town council shall constitute a quorum to transact business; a smaller number may adjourn from day to day and may compel the attendance of absent members under penalties previously prescribed by ordinance.

SEC. 9. The Town Council shall judge of their own elections and the returns thereof; and determine contested elections except in the first election, which may be judged and determined by the clerk of the county court.

SEC. 10. The Town Council may determine the rules of their own proceedings, may punish any member or other person for disorderly behavior in their presence; and expel a member upon the concurrence of any three.

SEC. 11. They shall keep, or cause to be kept, a minute journal of their proceedings, and any one may cause the ayes and nays to be taken and entered therein, and the journal and their meetings shall be public.

SEC. 12. The Town Council shall have power to adopt and establish such laws and ordinances as are necessary and proper for the good regulation, safety, health, and cleanliness of the town and its citizens, to levy and collect taxes on all property within their limits, except such as is exempt from taxation, which tax shall not exceed one per cent on the assessed value thereof; may make laws for the enforcement of the collection of said taxes, to make such improvements and regulations in relation to streets, alleys, and commons as to them may seem proper; may open, change, improve, or vacate the same; may establish a grade and change the same; to provide public wells, drains, sewers, and keep them

in repairs, may tax the costs, and enforce the payment thereof for such purpose.

SEC. 13. The Town Council shall have power to license and regulate or prohibit all shows or public exhibitions in a manner not inconsistent with the laws of this Territory; to license porters, draymen, and others who transport freight from one part of the town to another, to provide against fires, breaches of the peace, gambling, disorderly and indecent houses and persons, and may make ordinances for their restraint and abatement, and may [make] any other ordinary, suitable and proper police regulations, and impose penalties for the violation of such regulations, which penalties may be collected by civil action, in the name of the town, before the Mayor or by any justice of the Peace, subject to an appeal to the higher courts, under the same rules and regulations as other appeals from Justice.

SEC. 14. The town council shall have power to provide ordinances for the improvement of any street or part of street; for paving the same or the sidewalk thereof, or may require property holders on any street or part of street to improve or pave the same or the sidewalk thereof, and may provide for the enforcement of such requirements by the sale of such property. *Provided:* That the owners thereof shall have the right of redemption at any time within one year, upon the payment of such taxes and the costs accrued thereon with interest at the rate of twenty-five per cent. per annum.

SEC. 15. None of the ordinances or regulations shall take effect until they have been duly promulgated by publication in a newspaper, if there be one in such town, and by posting up in five public places at least five days, if there be no newspaper.

SEC. 16. The town council shall pass, by vote, all orders for the payment of money, which order shall be made only upon the written account presented, which shall be filed with the clerk as a voucher.

SEC. 17. The mayor and town council, in the name of the corporate name of the town, shall have power to make the entry of the town site in trust for the owners thereof, at the proper United States land office, when said office shall have been opened for the entry of the land on which said town is situated, and the town council may make such rules and regulations respecting the conveying of lots to their respective owners, as in their wisdom shall be just and right, and not inconsistent with the laws of the United States or the laws of this Territory.

SEC. 18. In cases where two or more persons are claiming any of the lots in said town, there shall be a trial before the town council, instituted and conducted in the same manner as trials of Justice of the Peace, the town council shall judge of the owner-

ship, and record their proceedings in the journal of proceedings, and from whose decision, there shall be an appeal to the District Court, under the same rules and regulations as appeals from Justice's Courts.

SEC. 19. The Mayor shall preside at all meetings, give the casting vote in case of a tie; call special meetings when in his opinion it is expedient; shall have power to call to his aid such assistance as is necessary in carrying out the provisions, by-laws, and ordinances adopted by the Town Council; shall sign all warrants for the payment of moneys upon the order of the council, and keep a record of the warrants so signed.

SEC. 20. The Mayor shall on the first day of February and October of each year, make, or cause to be made out, a correct statement of all moneys received and expended on account of said town during the preceding months which intervene, the time of making such statements, and shall within ten days thereafter, cause such statements to be published in some newspaper printed in the town if there be one, and if not, then he shall cause copies of such statements to be safely posted up in three of the most public places in such town, within ten days.

SEC. 21. If the Mayor shall fail or neglect to make or cause to be made public such statements as required by the preceding section, he shall forfeit and pay to the town the sum of fifty dollars, to be recovered in an action of debt before any court of record in the county having proper jurisdiction, which sum, if collected, shall be for the use of the town.

SEC. 22. The Mayor shall in case of vacancy in the office of any of the board of the town council, call a special election, giving five days' notice thereof.

SEC. 23. The Mayor shall be a conservator of the peace within the town, and *ex officio* justice of the peace, and is invested with jurisdiction for the violation of town ordinances, and with criminal jurisdiction of offences against the laws of the Territory committed within the town.

SEC. 24. The Town Council shall as often as necessary appoint two qualified voters as judges of election to superintend and conduct the same, and who may appoint a clerk, and who shall give public notice of elections, and the place of holding the same, by advertisement or handbills, at least ten days previous to the election. *Provided:*—That if the judges fail to attend the place of election on the day specified, the electors present may appoint such judge or judges who shall duly qualify, and all elections shall be by ballot; all annual elections shall be on the first Saturday of March of each year.

SEC. 25. Elections shall be kept open from ten o'clock A. M., to six o'clock P. M.; after the polls are closed, the judges shall

canvass the ballots, and give certificates of election to the persons having the highest number of votes for the respective offices.

SEC. 26. In cases of a tie, the judges shall determine the election between the persons having an equal number of votes, by lot.

SEC. 27. The clerk shall keep a correct journal of all the proceedings of the Town Council; shall record in a legible hand all ordinances and by-laws of the council; he shall issue all warrants for the payment of money ordered by the council, and sign his name thereto as clerk, and shall keep a true and correct record of the same, stating what the amount was, for what paid, and to whom, and also the number of the warrant, and the date thereof, which record shall be kept in a tablical form, leaving a column blank for the purpose of cancelling the warrant, when the same shall have been paid, and may call special meetings of the council in the absence of the Mayor.

SEC. 28. No incorporation shall be dissolved unless it shall appear to the satisfaction of the court that the notice has been given of the intended application for a dissolution of the corporation, by advertisement published in a paper in or nearest the town prayed to be disincorporated, for at least eight weeks successively prior to such application, nor until all their liabilities have either been paid or secured to the satisfaction of the county court.

SEC. 29. The County Court may dissolve the incorporation of any town when two thirds of the legal voters shall petition for the same.

SEC. 30. No dissolution of any corporation under this act shall invalidate or affect any right, forfeiture or penalty, accruing to such incorporation, or invalidate or affect any contract entered into or imposed by such corporation.

SEC. 31. Whenever the county court shall dissolve any corporation, they shall appoint some competent person to act as trustee, who shall, before entering upon the duties of his office, take an oath before some judge or justice, that he will faithfully discharge the duties of his office, and shall give bonds with security to that effect.

SEC. 32. Such trustee shall as soon as possible settle all the business of such corporation; he is the legal agent of the corporation, and may do all acts requisite to bring to a speedy close all the affairs of the corporation.

SEC. 33. The trustee shall report his proceedings to the county court at each term thereof, and when he shall have closed the affairs of the corporation, he shall pay over to the county treasurer all moneys, books, papers, records and deeds appertaining to the dissolved corporation.

SEC. 34. The aforesaid moneys and all such annual revenues accruing to said town, as shall have been paid to the county treas-

urer, shall be disposed of by the county clerk, for the benefit of said town, upon the petition of the inhabitants thereof.

Approved December 7, 1859.

CHAPTER XXII.

AN ACT

To prevent the intentional Firing of Woods and Prairies in the Territory.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That any person who shall wilfully or negligently set fire to any woods, prairie, or grounds not his own property, or shall wilfully or negligently permit any fire to pass from his own prairie, woods, or grounds, to the injury or destruction of the property of any other person, shall, upon conviction thereof, be guilty of a misdemeanor, and shall be punished by a fine not more than a thousand dollars, and such other punishment as the court may cause to be inflicted.

SEC. 2. Whenever the prairie or woods are on fire in this Territory, it shall be the duty of all persons knowing the same, to use all reasonable means in their power to extinguish the same.

SEC. 3. Any persons wilfully neglecting to comply with the second section of this act, may be punished by a fine not less than ten dollars, nor more than twenty dollars.

Approved December 2d, A. D. 1859.

CHAPTER XXIII.

AN ACT

Concerning Enclosures and Trespassing Animals.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That any structure, hedge or ditch, in the nature of a fence, used for purposes of enclosure, which is such as good husbandmen generally keep, and as shall on the testimony of practiced agriculturalists, appear to be sufficient, shall be deemed a lawful fence.

SEC. 2. If any domestic animal break into an enclosure, the person injured thereby shall receive the amount of damage done, if it should appear that the fence through which said animal broke, was lawful; but not otherwise.

SEC. 3. If, before the trial, the owner of such trespassing animal shall have tendered to the person injured any costs which may have accrued, and an amount in lieu of damages, which shall equal the amount of damages afterwards awarded by the court or by a jury, or shall offer in writing to confess judgment for the same, and if, notwithstanding the said injured party refusing the said offer, causes the trial to proceed, he shall pay the costs and receive only the damages awarded.

SEC. 4. When any domestic animal shall break into the enclosure of any person, such person, without regard to the season of the year, may take up such animal as an estray, whether the owner be known to him or not, and shall proceed as provided by law of estrays.

SEC. 5. Such taker-up, before posting or advertising, shall procure from two disinterested persons an examination and assessment of damages, with a certificate of the same including reasonable charges for such assessment.

SEC. 6. The owner shall not be entitled to demand the trespassing animal from such taker-up, unless he proceed, as in case of estrays, to prove his property and pay costs allowed in the case of estrays, and also damages and the costs of assessment.

SEC. 7. When a trespassing animal is sold, the taker-up, in addition to the usual costs and allowances in the case of estrays, may retain out of the value of such estray, the damages sustained by such trespass, and the costs of their assessment.

Approved December 6, 1859.

CHAPTER XXIV.

AN ACT

To Regulate Wills.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—Every person of twenty-one years of age and upwards, of sound mind, may by last will, devise all his estate, real, personal and mixed, and all interest therein, saving to the widow her dower.

SEC. 2. Every person over eighteen years, of sound mind, may by last will, dispose of his goods and chattels.

SEC. 3. Every will shall be in writing signed by the testator or some person by his direction in his presence, and shall be attested by two or more competent witnesses subscribing their names to the will in the presence of the testator.

SEC. 4. Every person who shall sign the testator's name to any will by his direction, shall subscribe his own name as a witness to such will and state that he subscribed the testator's name at his request.

SEC. 5. No will in writing except in the cases hereinafter mentioned, nor any part thereof, shall be revoked except by a subsequent will in writing, or by burning, cancelling, tearing, or obliterating the same by the testator, or in his presence, and by his consent and direction.

SEC. 6. If the testator have a mansion, house or known place of abode in any county, his will shall be proved before the county court of such county, or before the clerk of said court in vacation. If he have no place of residence within this Territory, the will shall be proved in the county in which he died.

SEC. 7. Wills may be proved by one or more of the subscribing witnesses appearing before the said court or clerk, and stating upon oath or affirmation that the testator signed the writing as his last will, or that some person signed it for him at his direction and in his presence, that he was of sound mind, and that the witness subscribed his name thereto in the presence of the testator, and at his request.

SEC. 8. If it shall so happen that all of the subscribing witnesses are dead, insane, or their residences unknown, then such proof shall be taken of the hand writing of the testator and of the subscribing witnesses, and such other circumstances as would be sufficient to prove such will on a trial at common law.

SEC. 9. Whenever any will is proven to the satisfaction of the court or clerk in vacation, the county clerk shall grant a certificate of probate, or if the proof be rejected, shall grant certificate of rejection.

SEC. 10. Any testator may appoint the executor or executors of his last will, and give general directions how his estate shall be managed and provide by his last will that his executor or executors may take charge of his whole estate and settle the same according to the provisions of his will without giving bond or taking out letters testamentary of administration on such estate. In such case it shall be lawful for such executor or executors after having proven such will as provided by the seventh, eighth, and ninth sections of this act, to take charge of all the estate of such testator, and settle and dispose of the same according to the provisions of such wills.

SEC. 11. The word "will," as used in this act, shall be so construed as to include all codicils as well as wills.

SEC. 12. Non cupative wills may be made only when the estate bequeathed does not exceed five hundred dollars, and during the last illness of the testator, and when the circumstances are such as to render the making of a written will impossible, or at least impracticable before the decease of the intestate.

SEC. 13. In order to establish a non cupative will it shall be necessary to prove in addition to the facts stated in section twelfth of this article by two witnesses who were present at the making thereof that the testator at the time of pronouncing the testamentary words, was of sound mind, and that he did bid some person present to bear witness that such was his will or to that effect.

SEC. 14. No probate of any non cupo(a?)tive will shall be granted for fourteen days after the death of the testator, nor shall any such will be at any time proved unless the testamentary words or the substance thereof be first committed to writing and a citation issued directed to the sheriff of the county, returnable in ten days, accompanied with a copy thereof, to call the widow or next of kin of the deceased that they may contest the probate of such will if they think proper.

SEC. 15. All courts and others concerned in the execution to the direction of the will and the true intent and meaning of the testator in all matters brought before them.

SEC. 16. In all cases not herein otherwise specified, estates devised by last will, shall be settled and managed according to the provisions of the statute respecting executors and administrators.

Approved November 25th, 1859.

CHAPTER XXV.

AN ACT

To create a Lien in favor of Mechanics and others, in certain cases.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That any person who shall perform any labor or furnish any material or machinery, for the reparation, erection or removal of any house, mill, manufactory, or other building or appurtenance, by virtue of a contract or agreement, expressed or implied, with the owner thereof or his agent, shall have a lien to secure the payment of the same, upon such house, mill, manufac-

tory or other building, or appurtenance, and the lot of land upon which the same shall stand.

SEC. 2. That every mechanic or other person doing or performing any work or furnishing any material for the erection, reparation or removal of any house, mill, manufactory or other building or appurtenance, erected, repaired or removed, under a contract or agreement, express or implied, between the owner thereof and his agent, and the builder or other person, whether such work shall be performed, or material furnished as journeyman, laborer, carman, sub-contractor, or otherwise, whose demands for work so done or materials so furnished, has not been paid, may deliver to the owner of such building or his agent, an attested account of the amount and value of the work and labor thus performed, or the materials thus furnished, and remaining unpaid; and thereupon such owner or his agent shall retain out of his subsequent payments to the contractors, the amount of such work and labor or material furnished, for the benefit of the person so performing or furnishing the same.

SEC. 3. Whenever any account of labor performed or materials furnished, as referred to in the preceding section, shall be placed in the hands of the owner of any building, or his agent, as above stated, it shall be the duty of the owner or agent to furnish his contractor with a copy of such papers, so that if there be any disagreement between such contractor and his creditor, they may, by amicable adjustment, or by arbitration, ascertain the true sum due, and if the contractor shall not, within ten days after the receipt of such papers, give the owner or his agent written notice that he intends to dispute the claim; or if, in ten days after giving notice, he shall refuse or neglect to have the matter adjusted as aforesaid, he shall be considered as assenting to the demand, and the owner or his agent shall pay the same when it becomes due.

SEC. 4. If the contractor shall dispute the claim of his journeyman or other person, for work done or materials furnished as aforesaid, and the matter cannot be adjusted between themselves, it shall be submitted to arbitrament of three disinterested persons, one to be chosen by each of the party and one by the two thus chosen, and the decision of any two of them shall be conclusive in the case submitted.

SEC. 5. When the account shall be adjusted as above provided, and the contractor shall not, within ten days after it is so adjusted, pay the sum to his creditors with the costs incurred, the owner or his agent shall pay the same out of the funds as above provided; and which amount due may be recovered from said owner by the creditor of said contractor, in an action at law, and to the extent in value of any balance due by the owner to his contractor under

the contract with him at the time of the notice first given as aforesaid, or subsequently accruing to such contractor, under the same, if such amount shall be less than the sum due from said contractor to his creditor.

SEC. 6. If by collusion or intentional fraud, the owner of any building erected by contract as aforesaid or his agent, shall pay to his contractor any money in advance of the sum due on said contract, and if the amount still due the contractor after the payment has been made, shall be insufficient to satisfy the demand made in conformity with the provisions of this act, for labor done and material furnished, the owner shall be liable to the amount that would have been due at the time of his receiving the account of such work or materials in the same as if no such payments had been made.

SEC. 7. That any person or persons entitled to a lien under this act, shall make an account in writing of the item of labor, skill, machinery and material furnished, or either of them, as the case may be, and after making oath thereto shall, within four months from the time of performing such labor and skill, or furnishing such machinery and material, file the same in the recorder's office of the county in which such labor, skill and materials shall have been furnished, which account so made and filed, shall be recorded in a separate book to be provided by the recorder for that purpose, and shall from the commencement of such labor, or furnishing of such materials, and for two years after the completion of such labor or the furnishing of such material operate as a lien on the several descriptions of structures and buildings, and the lots on which they stand, in the first section of this act named. When any labor has been done or materials furnished as provided on a written contract, the same or a copy thereof shall be filed with the account herein required.

SEC. 8. That every person or persons holding such lien may proceed to obtain a judgment for the amount of his or their account thereon by civil action, and when any suit or suits shall be commenced on such accounts within the time of such lien, the lien shall continue until such suit or suits be finally determined and satisfied.

SEC. 9. That when the owners of any house or building, or his or their agents, as described in this act, shall suspend its progress or completion without the consent of such laborers, mechanics and furnishers, or if the progress or completion of the same be suspended by the decease of the owner or owners, at a stage when, from its unfinished state, such structure would go to waste, the laborers, mechanics and furnishers thereto or any of them may, at their election, proceed with the same at their own costs, so far as to inclose such building, and thereby prevent any waste; *Provided* the work so done after said suspension shall be according to contract, and the plan of the owner or owners.

SEC. 10. That if the person or person who may erect as owner or owners any building described in the first section of this act, be not at the suspension or completion of the same, possessed by the legal but equitable title to the ground on which the same is erected (if the same be a fixture) and the fact of such defect of title be made to appear to the court before any judgment or judgments under this act may have been obtained; or if the same be returned by any legal officer to whom any execution under this act shall be directed, in either case, the court shall direct the officer who has returned, or who is authorized by law to serve such execution, to rent or lease such building or buildings until the rent and issues thereof shall pay and satisfy the several liens on which judgments may be had against the same; *Provided*, this law shall not be construed as to interfere with prior bona fide liens on grounds on which such building or buildings shall be erected as a fixture; and provided further, that the provisions of this section shall not be so construed as to include any lands, or claims, or town lots, made, selected, or being upon the public domain of the United States; but for the purpose of securing this lien and the just demands of the plaintiff, such lands, claims, or town lots may be proceeded against, and sold by execution under this act, the same as if the *fee simple* were vested in the defendant.

SEC. 11. That in all other cases of judgments obtained in favor of any lien holder or holders, if the property bound by such lien will not sell on execution, as provided by law in other cases, having been once duly offered, the court before whom such judgment or judgments may be obtained, may direct the aforesaid officer to lease the same in the same manner and for the same purpose pointed out in the preceding section, and the officer giving such lease or leases shall therein require the payment to be made to him or to his successors in office, which successor or successors shall have the same power and perform the same duties therein as the maker of the lease or leases should or could do; and in cases where the money may be collected by said officer, on lease or leases made under this act, it shall be his duty forthwith to pay the same into court, where the judgment or judgments were obtained, which money shall be distributed to the several lien holders interested in said judgments in proportion to their several demands.

SEC. 12. That all lien or liens may be discharged upon payment of judgment or debt, with all the legal costs before the property on which such lien or liens attach, be sold or leased under this act; and if any lien holder or holders after the same be duly tendered to him or them, shall proceed at law, or shall refuse to give a due discharge from such lien, then such lien holder or holders shall forfeit all lien and pay all costs.

SEC. 13. That if the owner or owners of such property which is subject to a lien under this act, be without the reach of process, or resident without the Territory, any lien holders may proceed by attachment against the same, as in other cases; and the court before whom the same attachment is pending on the entry of judgment on return of the proper officer, shall have the same power to enter lease or leases as is given in the tenth and eleventh sections of this act.

SEC. 14. That executors and administrators under this act, shall have the same rights and be subject to the same liabilities that their testator or intestate would or might have if living.

SEC. 15. That the county recorders, for filing and recording contracts and accounts under this act, shall be paid the same fees that they are legally entitled to in other cases.

SEC. 16. Each and every person in favor of whom any such lien has existed after having received satisfaction of his or their debt, or after final judgment against him, or them by a competent tribunal, showing that nothing is due by reason of such claims shall at the request of any person interested in the property on which the same was a lien, or who is interested in having the lien removed, or of his or their legal representatives, lodge a certificate with said recorder that the said debt is satisfied, and said lien removed, which certificate shall be filed, and recorded by the recorder on the margin of the record in the same manner that releases of mortgages, are now by law required to be recorded; and when so recorded shall forever discharge and release said lien; and if such person or persons having received such satisfaction as aforesaid by himself or attorney, or judgment having been rendered him as aforesaid, shall not within ten days after request in writing, lodge a notice in writing with the recorder as is prescribed in this section, he or they neglecting or refusing to do so, shall forfeit and pay to the party or parties so aggrieved any sum of money not exceeding one half of the debt claimed as a lien on such property according to the circumstances of the case, to be recorded in civil action; and the party lodging such certificate as aforesaid shall pay to the recorder the sum of twenty five cents for recording each notice or certificate as aforesaid.

SEC. 17. That any person who shall hold a lien under the provisions of this act, may, in addition to the remedy herein provided for, proceed by petition in chancery, as in other cases of liens against the owner or owners of, and all other persons interested, either as lien holders or otherwise, in any such house, mill, manufactory or other building or appurtenance in the first section of this act mentioned, and the lot or lots of land on which the same shall stand, and obtain such final decree therein for the rent or sale

thereof as justice and equity may require, anything in this act to the contrary notwithstanding.

LIENS UPON PERSONAL PROPERTY.

SEC. 18. Whenever any person shall deliver to any mechanic, artisan, or other person any material, articles, or any clock, watch, instrument, or any species of personal property, for the purpose of constructing, in whole or in part, or completing, or repairing, or improving the same, such mechanic, artisan, or person shall have a lien thereon for the just value of the labor and skill applied thereto, and for any materials he may have furnished in completing or constructing such work, and may retain the same until the charges are paid.

SEC. 19. The person having such lien may enforce the same, by commencing a suit for the recovery of such charges, by summons in the usual form, before any court or justice of the peace in the county of the proper jurisdiction.

SEC. 20. Such suit shall be conducted in the same manner as any other suit for debt in the same court, but the execution may be served upon the defendant by taking the property from the hand of the plaintiff, and proceeding with it as in other cases.

SEC. 21. Any Commission Merchant or Storage Merchant or keeper of a ranche, or bailee, or any other keeper of any personal property, shall have a lien upon such property, and may retain the same until the charges are paid, and may enforce the lien as provided in the two last preceding sections, *Provided* that the property shall not be sold on the execution until the notice of such sale shall have been published in some newspaper of the Territory at least six weeks prior to the date of sale.

SEC. 22. Any officer under the laws of this Territory or any person acting as an attorney shall have a lien upon and may retain such papers and instruments of writing until his reasonable charges are paid for correcting, altering, or placing his signature thereto, or making thereof; *Provided* that such writing or instrument or book does not belong to the Territory, nor to any county of this Territory.

CHAPTER XXVI.

AN ACT

Regulating License.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:—*The County Courts of the respective counties within the Territory of Jefferson, shall have power to grant licenses to

persons engaged, or persons wishing to engage in any of the following branches or business, and it shall not be lawful for any person to engage in, or carry on, any of the branches of trade or business hereinafter specified, without first having procured from said court a license as hereinafter provided by this act.

First: All Merchants or persons engaged in, or wishing to engage in the business of vending merchandise other than the growth, manufacture, or production of this Territory.

Second: All keepers of groceries, dram shops, or drinking saloons, or drinking houses of any kind, where spiritous liquors are sold by the glass or drink, including hotels.

Third: All keepers of billiard saloons, bowling saloons, or gaming saloons, or gaming houses of any kind.

Fourth: All Theatres, Circuses, or other public shows.

SEC. 2. That upon every Merchant's license there shall be levied a tax for Territorial purposes, as follows: On the first license granted, one fourth of one per centum upon all goods, wares, or merchandise not the growth, manufacture, or production of this Territory, on hand and exposed to sale at the time of the granting such license, and upon all licenses granted after the first, to the same person or firm, there shall be levied the same rate of tax upon all goods, wares, or merchandise, not the growth, manufacture, or production of the Territory, exposed to sale during the six months next preceding the date of the granting of such license, upon which a tax has not been paid during the same year.

Second: Upon all licenses to keepers to groceries, dram shops, or drinking saloons, or drinking houses of any kind, there shall be levied for Territorial purposes, a tax of fifteen dollars for the term of six months.

Third: Upon all licenses to keepers of billiard saloons, there shall be a tax levied for Territorial purposes, of five dollars for each table set up or kept for the term of six months.

Fourth: Upon all licenses to keepers of bowling saloons, or ten pin alleys, there shall be levied for Territorial purposes, a tax of five dollars for each alley for the term of six months.

Fifth: Upon all licenses for other gaming houses or tables of any kind, there shall be levied, for Territorial purposes, a tax of two dollars and fifty cents per month, for each table, and all monthly licenses may be granted for one month or more, as the applicant may desire.

Sixth: Upon all licenses to Theatre Companies, Circus Companies, or other public shows, there shall be levied, for Territorial purposes, a tax of not less than five, nor more than twenty-five

dollars per month; and the license may be granted for one month or longer, and authorize the company anywhere to exhibit in the county where the license is obtained.

SEC. 3. It shall be the duty of the clerks of the respective county courts, to furnish the sheriffs of the county with blank licenses suitable for each of the cases above specified, attested by his signature and the seal of the court of which he is clerk, and charge the sheriff with the number of licenses thus furnished.

SEC. 4. It shall be the duty of the sheriff to furnish any person wanting license with the same, upon their paying him the tax thereupon as the law directs; and to make settlement with the county court at every regular term of said court, of the amount of money collected on licenses and on such settlement the sheriff shall receive credit for all blank licenses returned by him at any such settlement.

SEC. 5. It shall be the duty of the sheriff to visit all merchants, and other persons whose business is such as to require them to obtain a license, and tender them, or their agent, a license, and explain to them the law regulating the same, and shall file up all licenses granted by him, in a proper manner, and state thereon the time of granting the license, and the time it expires, and attest the same by his proper signature.

SEC. 6. Any person who shall carry on or any of the branches of business, or set up, or keep, any of the tables or alleys mentioned in the first and second sections of this act, without first obtaining a license the sheriff having tendered the same, shall forfeit to the Territory the sum of not less than twenty, nor more than two hundred dollars, to be collected by action of debt.

SEC. 7. Any sheriff who shall fail or neglect to comply with the requirements of this act, shall forfeit to the Territory the sum of fifty dollars, to be collected by suit on his official bond.

SEC. 8. The sheriff may examine any party applying for license upon oath touching any matter necessary to the proper assessment of the tax on such license.

SEC. 9. The clerk shall be allowed one dollar for their service in granting each license, to be paid by the party obtaining the same, in addition to the tax.

SEC. 10. No license shall be granted for a longer time than six months, but may be renewed from time to time in the same manner, and under the same restrictions governing the issuing the first license, provided that in issuing merchants' license, no tax shall be levied on merchandize for which tax has been paid that year. This act to be in force from and after June 1st, 1860.

Approved November 25th, 1859.

CHAPTER XXVII.

AN ACT

Establishing Courts of Justice of the Peace and Defining the Jurisdiction thereof.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That the jurisdiction of Justices of the Peace, when not specifically restricted, is geographically co-extensive with their respective counties.

SEC. 2. That the Justices of the Peace within and co-extensive with their respective counties, shall have jurisdiction and authority in all civil cases where the amount in controversy does not exceed the sum of two hundred dollars, and by consent of parties, may be extended to any amount not exceeding five hundred dollars, except in chancery, and cases where the question of title to any real estate may arise, and cases the exclusive jurisdiction of which is given by statute to the miners' court.

WHERE SUITS MAY BE BROUGHT.

SEC. 3. That suits may in all cases be brought in the precinct where the defendant or one of several defendants, reside.

SEC. 4. That suits may also be brought in any other precinct of the same county, if actual service on one or more of the defendants is made in such precinct.

SEC. 5. The actions of replevin and suits commenced by attachment, may be commenced in any county and precinct wherein any portion of the property is found.

SEC. 6. That if none of the defendants reside in the Territory, suit may be brought in any county and precinct wherein either of the defendants may be found.

SEC. 7. That on written contracts stipulating for payment at a particular place, suit may be brought in the precinct where the payment was agreed to be made.

SEC. 8. That if there be no Justice in the proper precinct, qualified and able to try the suit, it may be brought in any adjoining precinct of the same county.

THE JUSTICE'S DOCKET.

SEC. 9. That every Justice of the Peace shall keep a docket in

which shall be entered in continuous order, with the proper date of each act done—

First: The title of the cause;

Second: A brief statement of the nature and amount of the plaintiff's claim and defendant's offset (if any) giving dates to each where dates exist;

Third: The issuing of a process and the return thereof;

Fourth: The appearance of the respective parties;

Fifth: Every adjournment stating at whose instance and for what time;

Sixth: The trial, and whether by the Justice or by a Jury;

Seventh: The Verdict and Judgment;

Eighth: The execution;

Ninth: The taking and allowance of an appeal if any;

Tenth: The giving a transcript for filing in the clerk's office, or for offset if one is given;

Eleventh: A note of all motions made, and whether refused or organized.

SUITS, HOW BROUGHT.

SEC. 10. The parties in the action may be the same as in the District Court, and all proceedings prescribed for that court, so far as the same are prescribed for that court, and so far as the same are applicable and not herein changed shall be pursued in Justice's Courts. The powers of the court are only as herein enumerated.

SEC. 11. That ordinary actions in Justice's Courts are to be commenced by voluntary appearance or by notice.

SEC. 12. That when actions are commenced by notice, no petition need be filed as is required in the District Court, except where the petition must be sworn to, but the notice must state the cause of action in general terms, sufficient to apprise the defendant of the nature of the claim against him.

SEC. 13. That the notice must be addressed to the defendant by name, but if his or her name be unknown a description of the defendant will be sufficient; the notice must be subscribed by the plaintiff or the Justice before whom it is returnable.

SEC. 14. That the notice must state the amount for which the plaintiff will take judgment, if the defendant fail to appear and answer at the time and place therein fixed.

SEC. 15. That the time thus fixed must not be more than fifteen days from the date, and the notice must be served not less than three days previous to the trial exclusive of the day of service.

SEC. 16. That service and return thereto, must be made in the same manner as in the District Court, except that no service shall be made by publication other than is herein provided, nor shall any return be made by another than the sheriff or a constable of the county be valid unless sworn to.

SEC. 17. That the defendant may at any time pay the officer having the process, or the Justice of the peace the amount of the claim, together with the costs which have then accrued, and thereupon the proceedings shall cease.

SEC. 18. That the parties in all cases shall be entitled to one hour in which to appear, after the time fixed for appearance, and neither is bound to wait any longer for the other.

SEC. 19. That upon the return day, if the Justice be actually engaged in other official business, he may postpone proceedings until such business is finished.

SEC. 20. That if from any cause, the Justice is unable to attend to the trial at the time fixed, if a jury be demanded, he may adjourn the case for a term not exceeding three days, nor shall he make more than two such adjournments.

SEC. 21. That in the case of the absence of witnesses either party may at his own cost obtain an adjournment not exceeding thirty days, by filing an affidavit like that required to obtain a continuance in the District Court for the like cause.

SEC. 22. That either party applying for an adjournment, must, if required by the adverse party, consent that the testimony of any witness of the adverse party, who is in attendance, be taken to be used on the trial of the cause.

SEC. 23. That the pleadings may be written, or oral, if oral they must in substance be written down by the Justice in his docket and sworn to, when such verification is necessary.

SEC. 24. That cross demands or offsets must be made, if made at all, at the time the answer is put in.

SEC. 25. That the original or a copy of all written instruments upon which a cause of action or offset is founded, must be filed with the claim founded thereon, or a sufficient reason given for not doing so.

SEC. 26. That unless one of the parties demand a trial by jury at or before the time of joining issue, the trial shall be by the justice.

SEC. 27. That if the plaintiff fail to appear by himself, his agent or attorney, on the return days, the justice shall render a judgment of non-suit against him for cost except the cases provided in the next section.

SEC. 28. That when a suit is founded on a written instrument purporting to have been executed by the defendant, in which the

demand of the plaintiff is liquidated, if the signature of the defendant is not denied under oath, and the instrument has been filed with the justice previous to the day for appearance, he may proceed with the cause, whether the plaintiff appear or not.

SEC. 29. That in the case provided for in the last section, if the defendant do not appear, judgment shall be rendered against him for the amount of the plaintiff's claim.

SEC. 30. That where the plaintiff's is not founded on such written instrument, the defendant does not appear the justice shall proceed to hear the allegations and proofs of the plaintiffs, and shall render judgment thereon for the amount to which he shows himself entitled, not exceeding the amount stated in the notice hereinbefore mentioned.

SEC. 31. That in the cases contemplated in the last two sections, if the defendant has previously filed an offset founded on a written instrument purporting to have been signed by the plaintiff calling for a certain sum, the justice shall allow such offset in the same manner as though the defendant had appeared, and shall render judgment accordingly.

SEC. 32. That judgment of non suit or by default may be set aside by the justice at any time within six days after being rendered, if the party applying therefor, can show satisfactory excuse for his default.

SEC. 33. That in such cases a new day shall be fixed for the trial, and notice thereof given to the other party or his agent.

SEC. 34. That such orders shall be made in relation to additional costs thereby created as the justice shall think equitable.

SEC. 35. That any execution which may in the mean time have been issued, shall be recalled as in the manner of cases of appeal.

SEC. 36. That either party, before announcing themselves ready for trial, may demand a jury.

SEC. 37. That the justice shall thereupon issue his precept to some constable of the precinct, directing him to summon the requisite number of jurors, possessing the qualifications of voters.

SEC. 38. That the jury shall consist of six jurors unless a smaller number be agreed upon between the parties; each party shall be entitled to three peremptory challenges; any deficiency in their number arising from any cause, may be supplied by summoning others in the manner above directed.

SEC. 39. That the justice may discharge the jury when he is satisfied that they cannot agree, and shall immediately issue a new precept for summoning another jury, to appear at a time therein fixed not more than three days distant, unless the parties otherwise agree.

SEC. 40. That no motion in arrest of judgment, or to set aside a verdict, can be entertained by a justice of the peace.

SEC. 41. That the verdict of a jury must be general, but where there are several plaintiffs or defendants, the verdict may be for or against one or more of them. (Judgment and proceedings incident thereto.)

SEC. 42. That in cases of non suit, confession, or on the verdict of a jury the judgment shall be rendered, and entered upon the docket forthwith. In all other cases the same shall be done within three days after the cause is submitted to the justice for final action.

SEC. 43. That if the sum found for either exceed the jurisdiction of the justice, such party may remit the excess and take judgment for the residue, but can never afterward sue for the sum, remitted.

SEC. 44. That instead of so remitting the excess, the party obtaining such verdict, may elect to have a non suit entered against the plaintiff, in which the plaintiff shall pay the costs.

SEC. 45. That mutual judgments between the same parties rendered by the same or different justices, may be set off against each other.

SEC. 46. That when a verdict is rendered by the same court, the same course shall be pursued as is prescribed in the District Court.

SEC. 47. That if the judgment proposed to be offset, was rendered by another justice, the party offering it, must obtain a transcript thereof, with a certificate of the justice who rendered it, endorsed thereon, stating that no appeal has been taken, and that the transcript was obtained for the purpose of being sued as an offset in that case.

SEC. 48. That such transcript shall not be given until the time for taking an appeal, has elapsed.

SEC. 49. That the justice so giving a transcript, shall make an entry of the fact in his docket, and all other proceedings in his court shall henceforth be stayed.

SEC. 50. That such transcript being presented to the justice who has rendered a judgment between the same parties as aforementioned, if execution has not been issued on the judgment rendered by him, he shall strike a balance between the judgments, and issue execution for such balance.

SEC. 51. That if execution shall have been issued, the justice shall also issue execution on the transcript filed with him, and deliver it to the same officer who has the other execution; such officer shall treat the smaller execution as so much cash paid on the larger, and proceed to collect the balance accordingly.

SEC. 52. That the above rules as to set-off, are subject to the same prohibitions as to setting off costs when the effect will be to leave an insufficient amount of money actually collected to satisfy the costs of both judgments, as is contained in the rules of proceedings in the district court.

SEC. 53. That when the judgment of another justice is thus allowed to be thus set off, the transcript thereof shall be filed among the papers of the case in which it is to be used, and the proper entry made in the justice's docket.

SEC. 54. That if the justice refuse the judgment as a set off he shall so certify on the transcript, and return the same to the party who offered it; when filed in the office of the justice who gave it, proceedings may be had by him in the same manner as though no such transcript had been certified by him.

FILING THE TRANSCRIPT IN THE CLERK'S OFFICE.

SEC. 55. That the party obtaining a judgment in a justice's court for more than twenty dollars, may cause a transcript thereof to be certified to and filed in the office of the clerk of the district court in the county where the judgment was rendered.

SEC. 56. That the clerk shall forthwith file such transcript and enter a memorandum thereof in his judgment docket, noting the time of filing the same, and from the time of such filing it shall be treated in all respects as to its effects and mode of enforcement as a judgment rendered in the district court of that date.

EXECUTION AND PROCEEDINGS THEREON.

SEC. 57. Execution for the enforcement of judgment, in a justice's court, except when docketed in the office of the clerk of the district court, may be issued by the justice before whom the judgment was rendered, or his successor in office, on the application of the party entitled thereto, at any time within one year from the entry of the judgment, but not after.

SEC. 60. That, if not satisfied when returned, it may be renewed from time to time by an endorsement thereon to that effect, signed by the justice, and dated of the date of such renewal.

SEC. 61. That such endorsement must state the amount paid on such execution (if any) and shall continue the execution in full force for twenty days from the date of such renewal.

SEC. 62. That property levied on before such renewal may be retained by the officer, and sold after renewal.

APPEALS.

SEC. 63. That any person aggrieved by the final judgment of a justice, may appeal therefrom to the district court of the county. The appeal must be taken and perfected within ten days after the rendition of the judgment.

SEC. 64. That if within ten days the appellant is prepared to take his appeal, and is prevented only by the absence or death of the justice, or his inability to act, he may apply to the clerk of the district court of the county for the allowance of his appeal.

SEC. 65. That such application shall be founded on an affidavit, stating the amount and nature of the judgment, and the time of the rendition thereof, as nearly as practicable, and the reason why he thus applies.

SEC. 66. That the clerk has thereupon the same power to act in the premises as the justice would have had; he may require the books and papers of the justice to be delivered to him, for which purpose he may issue a precept to the sheriff to that effect, if necessary, and make out and file the transcript, after which he shall return to the office of the justice all the papers proper to be kept by the justice of the peace.

SEC. 67. That the appeal shall in no case be allowed until a recognizance of the following term or its equivalent, is taken and filed in the office of the justice, the sureties being approved by him (or by the clerk acting for him as above authorized) and the sum therein inserted being sufficient to secure the judgment, as well as the costs of the appeal.

We, the undersigned, acknowledge ourselves indebted to
in the sum of dollars, upon the following condition: whereas,
 has appealed from the judgment of a justice of
the peace, in an action between as plaintiff, and
defendant; now if the said appellant pays whatever amount is
legally adjudged against him in the further progress of this cause,
then this recognizance is to be void, and otherwise in force.

A. B., Principal.

E. F., Justice.

C. D., Surety.

SEC. 68. That upon the appeal being taken in accordance with the foregoing provisions, all further proceedings shall be suspended; if in the mean time an execution has been issued, the justice shall give the applicant a certificate that the appeal has been allowed, and upon that certificate being presented to the constable, he cease further action and release any property that may have been taken in execution.

SEC. 68 [69]. That upon the taking of any appeal, the justice shall file in the office of the clerk of the district court, all the original papers relating to the suit, with a transcript of all the entries in his docket.

SEC. 70. That upon the return of the justice being filed in the office of the clerk, the cause will be deemed in the district court. The district court may by rule compel the justice to allow an appeal, or to make or amend his return according to law.

SEC. 71. That if an appeal is allowed ten days before the next term of the District Court, the justice's return must be made at least five days before that term, all such cases must be tried when reached unless continued for cause.

SEC. 72. That if the appeal be not allowed on the day on which judgment is renewed, written notice must be served upon the appellee or his agent, at least five days before the term of the court to which the cause is returnable, provided there be five days intervening, or the suit, on motion of the appellee, shall be continued at the cost of the appellant.

SEC. 73. That such notice may be served like the original notice, and if the appellee or his agent have no place of residence in the county, it may be served by being left with the justice.

SEC. 74. That an appeal brings up a cause for trial on the merits, and for no other purpose; all errors, irregularities, and illegalities are therefore to be disregarded under such circumstances, if the cause might have been prosecuted in the District Court.

SEC. 75. That no new demand or set off can be introduced into a case after it comes into the District Court, unless by mutual consent.

SEC. 76. The appellant must pay the costs of the appeal unless he obtain a more favorable judgment than that from which he appealed.

SEC. 77. That any judgment in the District Court against the appellant shall be entered up against him and his sureties jointly. If an appeal is taken for delay, the District Court shall award such damages, not exceeding twenty per cent. on the amount of the judgment below as may seem right.

WRITS OF ERROR.

SEC. 78. That any person aggrieved by an erroneous decision in matter of law or other illegality in the proceedings of a justice of the Peace, may remove the same, or so much thereof as is necessary, into the District Court for correction, by writ of error.

SEC. 79. That the basis of the proceeding is an affidavit filed in the office of the clerk of the District Court, setting forth the errors complained of, the clerk shall thereupon issue the writ, commanding the justice to certify the record and proceedings so far as they relate to the facts stated in the affidavit.

SEC. 80. That a copy of the affidavit shall accompany the writ, and be served upon the justice who makes the required return, within five days.

SEC. 81. That all proceedings in a justice's court, subsequent to judgment, may be stayed by a recognizance entered into, like that required in cases of appeals, and on which recognizance judgment shall be entered against the principal and surety in like manner and in like circumstances. The district court may compel an amended return, when the first is not full and complete.

SEC. 82. That the District Court may render a final judgment, or it may remand the cause to the justice for a new trial, or such further proceedings as shall be deemed proper, and may prescribe the notice necessary to bring the parties again before the justice.

SEC. 83. That if the District Court render a final judgment, reversing the judgment of the justice of the peace, after such judgment has been collected in whole or in part, it may award restitution with interest and issue execution accordingly, or it may remand the cause to the justice for this purpose.

SEC. 84. That every justice of the peace, upon the expiration of his term of office, must deposit with his successor his official dockets as well as those of his predecessors, which may be in his custody, there to be kept as public records.

SEC. 82. That if his office become vacant by death, removal from the precinct, or otherwise, before his successor is elected, the said docket and papers shall be deposited with the clerk of the District Court, to be by him delivered to the successor of the justice of the peace, when elected and qualified.

SEC. 86. That the justice with whom the docket of his predecessors is thus deposited, may issue execution on, or give a transcript of any judgment there entered, in the same manner and with like effect, as the justice who rendered judgment might have done.

SEC. 87. That when two or more justices are equally entitled to be deemed the successor in office of any justice as aforesaid, the clerk of the county shall determine by lot which is the successor, and shall certify accordingly; such certificate shall be in duplicate, one copy of which shall be filed in the clerk's office, the other to the said successor.

SEC. 88. That in case of sickness, other disability, or necessary absence of a justice at a time fixed for a trial of a cause or other proceedings, any other justice of the precinct may, at his request attend and transact the business for him, without any transfer of the suit to another officer; the entries shall be made in the docket of the justice at whose office the business is transacted, and the same effect shall be given to the proceedings as though no such exchange of official service had taken place.

SEC. 89. That no process can issue from a justice's court into another county, except when specially authorized.

SEC. 90. That the constable is the proper executing officer of a justice's court, but the sheriff may perform any of the duties required of the constable. The powers and duties of the sheriff in relation to the business of the District Court, so far as the same are applicable and not modified by statute, devolve upon the constable in relation to the justice's court.

SEC. 91. That the justice may be regarded as his own clerk, and performs the duties of both judge and clerk.

SEC. 92. That when the term of office of a justice for any cause, expires, his successor may issue execution, or renew an execution in the same manner and under the same circumstances as the former justice might have done if his term of office had not expired.

Approved December 2, 1859.

CHAPTER XXVIII.

AN ACT

To provide for the Payment of certain Officers, and Regulating their Fees.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That the following fees shall be allowed to officers and others, hereinafter named:

To the district attorney, for judgment in civil cases, five dollars; all collections for Territory or county, ten per cent.; drawing indictments, if found for misdemeanors, five dollars; indictment for felony, ten dollars; conviction in capital cases, twenty-five dollars; all other matters, such fees as shall be deemed reasonable by the court. The above fees shall be taxed as costs in the case, but no fee shall be allowed for indictment where the same is quashed.

SEC. 2. Clerks of county courts; every order not otherwise expressed, of one folio or less, twenty-five cents; all over one folio, for each folio, twenty cents; taking and filing contractor's bond, one dollar, reading and filing petition, complaint, remonstrance or objection, plea or report and order thereon, one dollar; certifying appointment of road reviewers, under seal, including copy of same, one dollar; same not under seal, fifty cents, certifying any matter under seal, fifty cents; certifying any matter without seal, thirty cents; taking and filing any bond, official or other-

wise, one dollar; entering appointment of any officer, fifty cents; making poll book, per page, twenty-five cents; all matters incorporating any town, ten dollars and fifty cents; all matters in relation to organizing townships, ten dollars; taking acknowledgment of any instrument, one dollar; every original writ, one dollar and fifty cents; every subpoena or mesne process, one dollar; filing every paper, ten cents; entering every issue made, twenty-five cents; administering every oath, ten cents; entering decision on same, fifty cents; copies of records or transcripts or other matter, for each folio, twenty cents; making out in copying tax list or book, for each folio fifteen cents; taking receipts and filing the same, twenty-five cents; filing and recording each certificate of strays, including appraisements, whether such certificate contains a greater or less number of estrays, one dollar and fifty cents; for sending a certified list of estrays to the printer, for each estray, twenty-five cents; all services for individuals or incorporations, or done on the application of either, shall be paid by them, and all services done for the Territory, or a county, shall be paid by the Territory or county.

SEC. 3. The claim of the county court for probable business:

Appointment of executor, or guardian, and certifying the same, one dollar; granting letters testamentary of administration, one dollar and fifty cents; taking bond in any case, and approving the same, one dollar; taking probate of will, entering and certifying the same, one dollar and fifty cents; certificate under seal, or otherwise, fifty cents; every order, motion, or will entered, twenty-five cents; every settlement or other matter entered, of record, if one folio or less, twenty-five cents; every additional folio, twenty cents; filing every paper ten cents; administering oath, ten cents; taking acknowledgment of any instrument, fifty cents; every original writ, one dollar and fifty cents; every subpoena, fifty cents; docketing every case, twenty cents; every issue joined, twenty cents; entering appearance of each party, twenty cents; precept for jury, fifty cents; serving jury twenty-five cents; taking and entering verdict, twenty-five cents; entering judgment, seventy-five cents; issuing execution, one dollar and fifty cents; entering demand against estate, twenty cents; every order allowing or disallowing the same, twenty-five cents; order classifying claim, twenty-five cents; trial without jury, seventy-five cents; entering and finding of court, fifty cents; commissioner to take depositions, one dollar; every order, or rule, not herein specified, twenty-five cents; copying any rules, orders or other writing, per folio, twenty cents.

The above fees to be taxed against the estate concerning which the services are performed, except in cases of litigation, then always against the losing party, unless otherwise ordered by the court.

SEC. 4. Clerks of the Supreme Court:—

Issuing any writ, original, two dollars; issuing subpoena, one dollar; taking bond, one dollar and fifty cents; filing every paper, twenty-five cents; administering every oath, twenty-five cents; filing assignment of errors or joinder, fifty cents; for recording or copying any opinion, brief, abstract, or other matter, per folio, twenty cents; retaxing cost if required, per folio, twenty cents; for all other services done, the same fees as are allowed to clerks of the district court for similar services.

SEC. 5. Clerks of District Courts:

Filing every paper, ten cents; issuing every original writ, two dollars; entering appearance, twenty-five cents; taking and entering recognizance, one dollar; taking every bond not otherwise specified, one dollar; entering every order, motion, rule, application, settlement, report, plea, or other matters, of one folio, or less, fifty cents; for each additional folio, twenty cents; every continuance, one dollar; every subpoena, one dollar; commission to take depositions, one dollar and fifty cents; certificates and seal, one dollar; administering each oath, twenty-five cents; judgments, or discontinuances of any issue, one dollar; precept for jury, one dollar and fifty cents; swearing and entering jury, one dollar; taking and entering verdict, one dollar; delivering copy of special jury to each party, when required, one dollar; trial by the court, one dollar; trial by jury, one dollar; entering appeal from justice of the peace, one dollar; entering appeal to the Supreme Court, one dollar; recognizance on appeal, one dollar; affidavit, one dollar; writ of certiorari, one dollar; bond of certiorari, one dollar and fifty cents; entering satisfaction of record, fifty cents; taking acknowledgment of sheriff's deed, one dollar; entering and certifying same, one dollar; taking acknowledgment of any instrument, one dollar; scire facias, two dollars; copying any matter, per folio, twenty cents; every verdict return by grand jury, two dollars; venire for grand jury, two dollars; swearing and entering grand jury, one dollar and fifty cents; every issue in chancery directed, fifty cents; interlocutory decree, two dollars; entering final decree, two folios or less, ten dollars; all over ten folios, per folio, twenty-five cents; writ of injunction, two dollars; process of sequestration, two dollars; all fees specified in this section, shall be applicable as well in civil as in criminal business, and also in chancery.

SEC. 6. Sheriff's fees:

Serving every original writ for each defendant, two dollars; taking and returning every bond, two dollars; serving *scire facias*, injunction or other writ, two dollars; serving execution, two dollars; calling action, twenty-five cents; writing sheriff's deed, when required four dollars; calling each party or witness, twenty-

five cents; summoning each witness, one dollar; executing every mesne process, one dollar; returning *non est* on any writ, original or judicial, or return of *me la bona*, one dollar; summoning jury on special verdict, three dollars; calling grand or petit jury, fifty cents; serving notice, rule of citation one dollar; summoning jury of inquest, or to try the right of property, and drawing and returning report, four dollars; taking recognizance of prisoner and returning same, two dollars; boarding prisoner by day one dollar; trial or confession in criminal case, two dollars; trial or confession in capital case, five dollars; executing sentence of death, including expense of performing the same, twenty-five dollars; every sheriff shall be allowed for safe keeping, supporting live stock, and other property seized under legal process, such fees as the court shall deem reasonable, to be taxed as other costs; for commission, for receiving and paying over money on execution, when property has been sold, eight per cent. on the first two hundred dollars; six per cent. on the next three hundred dollars; four per cent. on all sums above five hundred dollars, and one half such compensation when the money is paid without levy, and three fourths of such commission when levy has been made, but no sale, and such commission shall be paid as other costs.

SEC. 7. Constable's fees:

Serving warrants in criminal cases, one dollar; serving summons or notice, fifty cents; summoning witnesses, fifty cents; summoning jury to try the right of property, swearing and taking verdict, two dollars and fifty cents; summoning jury before a justice, one dollar and fifty cents; serving execution, fifty cents; taking any bond required by law, one dollar; attachment, one dollar; receiving and keeping property, such compensation as the justice may deem reasonable, and for all collection to be paid as other costs. The same fees for services in the Miner's court.

SEC. 8. Justice of the Peace:

Issuing summons or subpoena, fifty cents; issuing precept for jury, fifty cents; issuing original attachment, one dollar; issuing writ of forcible entry and detainer, one dollar and fifty cents; writ of restitution or re-restitution, one dollar and fifty cents; criminal warrant or warrant of commitment, one dollar and fifty cents; an attachment in the process of cause, fifty cents; taking any bond required by law, one dollar; administering oath, (each person sworn) ten cents; swearing jury, fifty cents; taking verdict, fifty cents; entering judgment, one dollar; docketing cause, twenty-five cents; affidavit, when certified, or affidavit on appeal, fifty cents; taking acknowledgment of any instrument, one dollar; certifying depositions, fifty cents; writing depositions, transcript copies, or entering any matter on docket, per folio, twenty cents; all services in posting any estray, one dollar and fifty cents; recog-

nizance in criminal cases, seventy-five cents; taking testimony, per folio, twenty cents; every warrant, writ, or process, not otherwise expressed, fifty cents; solemnizing marriage, including recorder's fees, five dollars.

SEC. 9. Notaries Public:

Taking acknowledgment of deeds or other writing, one dollar; traveling, when required, per mile, twenty cents; all other services, same fees as allowed to clerks for similar services.

SEC. 10. Recorders:

Recording all instruments of writing, per folio, twenty cents; indexing same, twenty cents; recording plat of survey, per course, ten cents; recording marriage certificates, one dollar; each certificate and seal one dollar.

SEC. 11. Judges of the County Court:

Each member in attendance at court to be paid by the county, per day, five dollars.

Jurors and Witnesses:

Each juror, per case, in any court, to be paid by party claiming jury, before cause is tried, and taxed as other costs, one dollar; each witness in any court, per day, two dollars; going to and returning from any place of holding court, per mile, ten cents.

SEC. 13. The term folio, whenever used in this act, shall be deemed to mean one hundred words, and any figure shall be counted as one word, and all fractions shall be counted as one figure.

SEC. 14. Each clerk shall keep a fee book, and enter therein all fees to officers, witnesses or other in his court, and all officers shall keep posted up in their office a list of fees allowed them by this act; and on failing to do so, shall be subject to a fine of twenty dollars, to be collected by action of debt, to the use of the Territory.

SEC. 15. Any clerk, judge or justice of the peace may issue fee bills, and they shall have all the force and effect of any execution.

SEC. 16. Any party who may have paid any fees, may have them taxed as other costs, and on producing his voucher, have them paid back to him.

SEC. 18. All fees due any officer or other person, shall be deemed due when the services are performed, and such officer, witness or juror, except in criminal cases, may refuse to act until his fees are paid or secured; all fees for services for any individual or corporation, all services for the benefit of the county, shall be paid out of the county treasury, and all fees for services performed for the Territory shall be paid out of the Territorial treasury.

SEC. 19. Judge of the Miners' Court:

For entering every cause on docket, two dollars and fifty cents; rendering judgment, two dollars and fifty cents; venire for jury, one dollar; all other services rendered, the same fees as are allowed to justices of the peace.

Approved December 7th, 1859.

CHAPTER XXIX.

AN ACT

To give legality to Decisions of Miners' Courts, and Meetings for other Purposes.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That the rules, laws and regulations heretofore established by the miners and inhabitants of the gold region of this Territory, and the decisions of their various courts and meetings made in pursuance thereof, and not inconsistent therewith, are hereby legalized and declared valid.

SEC. 2. That all sales, transfers and alienations heretofore made by the miners and others, of claims for mining, and lots for building purposes, in accordance with the regulations in the various mining districts and precincts in which they are situated, are hereby declared legal and valid.

SEC. 3. The provisions of this act shall not be so construed as to apply to any action, conveyance or decision had after the passage of this act.

Approved December 7th, 1859.

CHAPTER XXX.

AN ACT

To provide a Docket Fee in District and Supreme Courts.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That the judges of the district court shall receive a docket fee of five dollars in each case, to be taxed as other costs.

SEC. 2. There shall be allowed a fee of ten dollars in each case, in the supreme court, to be divided equally among the judges.

SEC. 3. All fees so collected shall be charged to the judge so receiving them, and the Territory credited for the amount thus received.

Approved December 7th, 1859.

CHAPTER XXXI.

AN ACT

Regulating Fees in certain cases.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—Every person or company, filing with any county recorder a charter under the general incorporation law of this Territory, shall pay to the recorder of said county a fee of fifteen dollars—twelve dollars and fifty cents to be paid into the county treasury as revenue, and two dollars and fifty cents to the recorder.

Approved December 7th, 1859.

CHAPTER XXXII.

AN ACT

Authorizing Officers to use Private seals.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That all officers and persons required by law to keep a seal, and attest their official acts therewith, are authorized to adopt or use a scrawl or private seal in the attestation of their official acts, until such seals as are required by law can be procured, and the same is hereby declared legal and valid.

Approved December 7th, 1859.

CHAPTER XXXIII.

AN ACT

Further defining the Powers and Jurisdiction of Courts in the Territory.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That courts of law and equity, established by the provisional legislature of the Territory of Jefferson, shall not have or exercise any power or jurisdiction to hear or determine any case, or suit, or render a judgment, or issue any execution for the enforcement of the same, except the cause of action or suit originated within the limits of Jefferson Territory, unless when the cause of action upon which suit is commenced, was entered into in whole or in part, without the limits of the Territory, to be consummated in the Territory, and some portion of the contract actually executed or performed in pursuance of said agreement, by one of the parties, in good faith in the limits of the Territory.

SEC. 2. That all actions brought or commenced in the courts of this Territory upon any instrument whatever, showing that it was executed within the limits of this Territory, shall be dismissed by the court in which suit is commenced upon such instrument, unless the plaintiff can show it comes within the exceptions in the first section of this act.

SEC. 3. It shall be the duty of the court of this Territory to require proof of the party denying jurisdiction of the court, showing that the court has no jurisdiction of the action or suit where the instrument sued upon is silent as to its place of execution.

Approved December 25th, A. D. 1859.

CHAPTER XXXIV.

AN ACT

To authorize the Formation of Military Companies.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—The acting Militia of this Territory shall consist of

volunteer companies, to be composed of men between the ages of nineteen and fifty years.

SEC. 2. Whenever twenty or more men shall associate together for the purpose of forming a volunteer company, they shall, at their first meeting proceed to the election of officers for said company, provided that a company shall not consist of more than seventy-two men exclusive of commissioned officers.

SEC. 3. Any volunteer company shall have power to adopt such constitution and by-laws for its government and discipline, not inconsistent with the laws of this Territory, as a majority of the members of the company may deem proper, and all sentences and fines imposed in pursuance of such constitution and by-laws, may be enforced and collected as hereinafter provided.

SEC. 4. Whenever any company shall be organized under the provisions of this act, the captain of such company shall transmit to the governor of this Territory, a copy of the constitution and by-laws, together with the names of the officers of said company, which copy shall be attested by the clerk or secretary of said company.

SEC. 5. It shall be the duty of the governor to commission one captain, and two lieutenants for said company for the time for which they shall have been elected under the by-laws of said company.

SEC. 6. The governor shall, when the persons (officers) have been commissioned by him under the provisions of this act, order the inspector general to deliver to the commandant of such company, a proportion of any arms and accoutrements at his disposal, belonging to the Territory; and the governor shall, when he delivers any arms and accoutrements to any company, take bond with approved security for the return be ordered by the governor of this Territory.

SEC. 7. Volunteer companies shall parade for company exercise at such time and place as shall be provided by their laws.

SEC. 8. Every member of a volunteer company shall be constantly provided with arms, equipments, and uniform, shall appear at the time and place fixed by the laws of such company, and at all other times when ordered by the commandant of the company.

SEC. 9. Any volunteer militia organized under the provisions of this act, shall be liable to be called into service, in case of war, or invasion, or to prevent or suppress riots, or aid the civil authorities in the execution of the laws of this Territory.

SEC. 10. Every volunteer company organized under the provisions of this act, shall be in strict subordination to the civil powers of this Territory.

SEC. 11. The system of discipline and field exercise which is ordered to be observed by the regular army of the United States,

in the different corps of cavalry, infantry, artillery, light infantry and riflemen, and such other system as may hereafter be directed for the militia, by the laws of the United States, shall be observed by the company in the exercise and discipline of said corps respectively.

SEC. 12. All musicians of band, whether hired or members of the volunteer companies, while acting on duty, shall be subject to the same commands, and liable to the same duties and penalties as other members of such companies.

SEC. 13. Each company may adopt some suitable uniform, to be paid out of the funds of the company, provided for that purpose, together with a flag, musical instruments, and any equipage necessary for the purposes of the company; and when any member abandons, or is expelled from such company, the same, together with all arms and other property belonging to the company, shall be returned as the property of the company.

SEC. 14. Any commissioned officer may be removed by the Governor, on a petition of two-thirds of the members of the company to which he may belong, whenever he may deem it necessary or proper.

SEC. 15. The commanding officer of any company formed under the provisions of this act, may call out such company for the purpose of drill and discipline, at least once in three months, and oftener, if thought proper, also for elections in the company, but for no other purpose except as provided for by the laws of such companies.

SEC. 16. Every officer and member of a volunteer company, for any neglect or refusal of duty required by the by-laws of such company, shall forfeit and pay such fines and be subject to such penalties as the by-laws may prescribe, and may be sued before any justice of the peace as in other cases, for the sums due, on complaint of such company.

SEC. 17. The governor shall appoint and commission one adjutant general, and one aid, with the rank of brigadier general.

SEC. 18. The inspector general, under the order of the governor, who is hereby declared commander-in-chief of the military forces of this Territory, and shall annually report to the legislative assembly the condition of the same; and for this purpose it shall be the duty of each captain or commandant of his company to deliver to said inspector or general such arms as his company may have, for inspection when required.

SEC. 19. The captains or commanding officers of each company shall annually, one month previous to the meeting of the Legislative Assembly, make a full and complete return to the adjutant general of the names of all officers and members of his company, also the dates and commissions and place of residence of the officers.

SEC. 20. The adjutant general and inspector general shall be allowed and paid annually, such sums as the legislature may from time to time direct, for books and stationery, and services in the discharge of their lawful duties.

SEC. 21. The adjutant and inspector general, and governor's aids, shall hold their offices for one year, but may be renewed by the governor at his discretion.

Approved December 25, 1859.

CHAPTER XXXV.

AN ACT

Defining the Judicial Districts of the Territory of Jefferson, and the time of holding Courts therein.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—The first judicial district shall be composed of the counties of Arrappahoe, Jefferson, and Mountain, and there shall be a term of the district court held in each month, as follows:

In Arrappahoe county, on the second Monday in January, A. D. 1860, and on the second Monday of each month thereafter; in the county of Mountain, on the fourth Monday in January, A. D. 1860, and on the fourth Monday in each month thereafter; in the county of Jefferson, on the first Monday in January, A. D. 1860, and on the first Monday in each month thereafter; and shall be assigned to the Honorable A. J. Allison.

SEC. 2. The second judicial district shall be composed of the counties of Cheyenne, Steele, Jackson, St. Vrain, and North, and there shall be a term of the district court held in the county of Jackson and Steele at the county seat of Jackson county, on the first Monday in January, A. D. 1860, and on the first Monday in each month thereafter, provided the clerk of the district court of Jackson county shall not be the clerk of the county court of Steel county; there shall be a term of the district court held in St. Vrain county, on the second Monday in January, A. D. 1860, and on the second Monday in each month thereafter; in the county of North on the third Monday in January, A. D. 1860, and on the third Monday in each month thereafter, except when the supreme court is in session, at which time there shall be no court holden in said county; there shall be a term of the district court holden in Chey-

enne county on the fourth Monday in January, A. D. 1860, and on the same day in each month thereafter; and said district shall be assigned to the Honorable Eason Fitzgerald.

SEC. 3. That the third judicial district of this Territory shall be composed of the counties of Fountain, El Paso, Park, and Saratoga, and there shall be a term of the district court held in Fountain county, on the first Monday in January, A. D. 1860, and on the same day in each succeeding month thereafter; there shall be a term of the district court held in Pike county, on the second Monday in January, A. D. 1860, and on the same day in each succeeding month; there shall be a term of the district court held in Park county on the third Monday in January, A. D. 1860, and on the same day in each succeeding month, except when the judge is bound by law to attend the Supreme Court, there shall be a term of the district court holden in Saratoga county, on the fourth Monday in January, A. D. 1860, and on the same day in each succeeding month; and the said district to be assigned to the Honorable John N. Odell.

SEC. 4. That the judges of the supreme court of this Territory shall receive from the Treasurer of the Territory the sum of two thousand five hundred dollars, to be paid quarterly, out of any money in the Treasury not otherwise appropriated, provided that the time for computing pay shall not commence until the first day of January, A. D. 1860.

SEC. 5. That any money received by said judges as fees, as elsewhere provided, shall be charged to said judges, and the Territory credited by the same, and the auditor, in settling their quarterly accounts, shall deduct the amount received in fees, and issue a warrant for the balance due said judges.

Approved December 3d, 1859.

CHAPTER XXXVI.

AN ACT

Confirming the Election of J. W. Kehler as Sheriff, and fixing the Limits of his Jurisdiction under the Provisional Government.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor*

approving:—That the election of J. H. Kehler to the office of Sheriff of the county of Arrappahoe, be and hereby is confirmed—provided that the said Kehler shall not exercise the duties of Sheriff in Arrappahoe unless he reside in the same, and act as the principal Sheriff therein.

SEC. 2. That the jurisdiction of J. H. Kehler, as Sheriff, extend over the first judicial district, during the time for which he was elected—provided that he will by appointment of competent deputies in each county in said district, consult the will of the majority of the people of such counties, and enter into bond with the county court of such county, in such sum and manner as may be directed by such court—provided that the jurisdiction of said Kehler shall not extend over the county of Jefferson, unless, he, the said Kehler, make that county his place of residence, and perform the duties of Sheriff of said county in person.

Approved December 7th, 1859.

CHAPTER XXXVII.

AN ACT

To provide for the expenses of the first session of the General Assembly of the Provisional Government of the Territory of Jefferson.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving*:—That immediately upon the passage of this act, the Auditor shall proceed to draw warrants upon the treasurer in favor of persons to whom the amounts hereby appropriated, are due.

SEC. 2. The Treasurer shall pay out of any funds in his hands, applicable to such use, the amount stated due in the Auditor's warrants in the following order:—

First: Sums due for printing accounts.

Second: Sums due for incidental expenses of the session.

Third: The per diem of members and officers of the General Assembly.

SEC. 3. All the expenses of the session, except for printing and

the per diem of members and officers, shall be deemed incidental expenses of the session.

SEC. 4. The following amounts are hereby appropriated for the uses specified, viz :

First: The Speaker of the House of Representatives and the Speaker of the Council, shall each receive twelve dollars per diem, for each day of this session.

SEC. 5. The members of the House of Representatives and the Council, shall each receive ten dollars per diem, for each day of this session.

Second: The Chief Clerk of the House of Representatives and Secretary of the Council, shall each receive twelve dollars per diem, for each day of this session.

SEC. 6. The Engrossing and Enrolling Clerks of the Council and House of Representatives, shall each receive twelve dollars per diem, for each day of this session; and that the Assistant Engrossing Clerks shall receive such pay only for the time they shall act; provided, that the Engrossing and Enrolling Clerks of the Council shall not receive more than twelve dollars per day for his services for each day actually engaged as such clerk.

SEC. 7. The Assistant Clerks of the House of Representatives and Council, shall each receive twelve dollars per diem for each day of this session.

SEC. 8. The Sergeant-at-arms of the House of Representatives and Council, shall each receive ten dollars per diem, for each day of this session.

SEC. 9. The Messengers of the House of Representatives and Council, shall each receive six dollars per diem, for each day of this session.

SEC. 10. Mr. shall receive for cabinet work, for the House of Representatives, the sum of fifty dollars.

SEC. 11. Mr. N. G. Wyatt shall receive for stationery furnished to the Council and House of Representatives, the sum of thirty dollars.

SEC. 12. Messrs. Byers & Co. shall receive, for printing Rules of House, for the General Assembly, the sum of fifty dollars.

SEC. 13. Mr. H. J. Rogers shall receive, for room rent for the Council, the sum of thirty-five dollars.

SEC. 14. J. G. Simms shall receive the sum of fifty dollars, for room rent, for the use of the House of Representatives.

SEC. 15. Each number of the Council and the House of Representatives shall receive fifty cents per mile, for every mile of necessary travel in coming to and going from, the place of meeting of the General Assembly.

Approved December 7th, 1859.

CHAPTER XXXVIII.

AN ACT

Providing for the Payment of Warrants, and other purposes.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That all warrants drawn by the Auditor on the Treasurer, shall be paid by the Treasurer only in the order in which they are drawn, according to the priority of date—provided that all warrants are receivable into the Treasury in payment of any taxes, licenses, or other dues due the Territory.

SEC. 2. That all warrants bearing date on the same day, have equal priority, and shall be paid in the order in which they are presented for payment.

SEC. 3. That the Auditor shall issue his warrants on the Treasurer in any sum that the party may desire, entitled to the same—provided they shall not be less than five dollars, unless the sum due is less than that amount.

Approved December 3d, 1859.

CHAPTER XXXIX.

AN ACT

To provide for the Redemption of Warrants and other Purposes.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That the warrants drawn by the Auditor of this Ter-

ritory on the Treasurer, shall be received by the Sheriff or Collector of the Revenue in payment of taxes, fines, and penalties, or other dues to the Territory, at par, and shall be received from such officer by the Treasurer in settlement of revenue due from such Sheriff or Collector of the Territory.

SEC. 2. That all warrants drawn by the County Court of any county on the county Treasurer, shall be received by the Sheriff or Collector, for all taxes, fines, and penalties, or other dues to the county, at par, and shall be received by such Treasurer from such Sheriff or Collector, on settlement of his accounts with the county.

SEC. 3. No Sheriff or Collector of the Revenue shall buy, purchase, trade for, or in any manner deal, in the warrants drawn by the Auditor or by any county court, except at their par value, and for every offence committed against the provisions of this act, shall be fined in any sum not exceeding five hundred dollars.

Approved December 7th, 1859.

CHAPTER XL.

AN ACT

To provide for the payment of the Commissioners for the Codification of the Laws, etc.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That the Commissioners to prepare a civil code and criminal code, shall be allowed forty days in which to complete said work; and they are hereby allowed ten dollars per day for each day actually employed in said work, provided they shall not exceed the time above specified, to be paid out of any money in the Treasury not otherwise appropriated.

SEC. 2. That said commissioners are authorized to employ one clerk each, to assist them in said work, upon such terms as they think reasonable; the same to be audited and paid as other acts against the Territory.

Approved December 7th, 1859.

CHAPTER XLI.

AN ACT

For the Form of Warrants, and other Purposes.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—All warrants drawn by the auditor on the treasury of the Territory, shall be in the following form:

No. _____ Denver City, Jefferson Territory,
Treasurer of the Territory, of Jefferson, pay to
or order _____ dollars, out of any money in the treasury
not otherwise appropriated, and charge the same to
and this shall be your voucher.

Issued A. D. 18 . (Signed)
Auditor of Jefferson Territory.

Approved December 7th, 1859.

CHAPTER XLII.

AN ACT

Regulating the taking up and posting of Estrays.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—No person shall be authorized to take up any stray beast, unless he be a citizen of, and house-holder in the county where such stray shall be taken up, unless he first enter into bond with sufficient security, to the Territory of Jefferson, for the use of the owner, in double the amount of the property proposed to be taken up, to be ascertained by the justice before whom the person wishes to post such stray beast.

SEC. 2. If any person take up any stray of any kind and it be not claimed and proved, he shall, within five days, go before a

justice of the peace of the county, and make oath that said stray was found by him, going at large, and that he has good reason to believe, and does believe, that it had strayed or become lost from its owner, and that the marks and brands had not been altered since so strayed or lost, to his knowledge.

SEC. 3. If necessary, the justice shall issue a summons to three disinterested house-holders to appear and appraise the stray.

SEC. 4. The house-holders, or two of them, shall take an oath that they will fully, fairly, and impartially appraise the same, and their appraisement, embracing a description of the size, color, sex, age, marks and brands of the stray, shall be entered by the justice in a book to be kept by him for that purpose.

SEC. 5. The justice shall deliver to each taker up, two certified copies of the entry upon his stray book, one of which he shall within ten days after such appraisement, cause to be delivered to the clerk of the county court.

SEC. 6. The taker up shall immediately after the appraisement, cause a notice to be posted up at three of the most public places in the township in which the stray is posted, which shall contain a copy of the entry upon the justices' stray book.

SEC. 7. The clerk of the county court shall, immediately after receiving the certificate of any stray from the justice, record the same in a book to be kept by him for that purpose.

SEC. 8. The secretary of the Territory shall, on the first day of January in each year, contract with the publisher of some newspaper published within the Territory, for the publishing once in each month a list of all stray notices, certified to from the clerks of the respective county courts, and immediately notify the clerks of the said courts of such contracts, a copy of said paper containing such list to be sent by such publisher to the clerks of the county courts for each county in the Territory immediately after its publication, which papers shall be kept in the office of the clerk, for public inspection.

SEC. 9. The clerks of the respective county courts shall on the first day of each month, transmit to the publisher of such paper a certified list, containing a brief, concise description of all strays certified to him during the month previous.

SEC. 10. Any person may use a stray legally taken up and posted by him, if he does so with care and moderation and does not abuse or injure it.

SEC. 11. The owner of any stray, within twelve months from the time of taking up, may prove the same before any justice of the peace, and upon payment of all costs may be entitled to receive the stray.

SEC. 12. If the owner and taker up cannot agree upon the amount of such allowance, it shall be settled by some justice of the peace, who shall take into consideration the trouble and expense of the taker up and whatever use or service he may have had of such stray.

SEC. 13. If the owner fails to comply with the preceding sections for twelve months after the time of taking up, and the taker up shall have complied with the law, a complete title to such stray shall vest in the taker up.

SEC. 14. In all cases where the title to any stray property shall vest in the taker up by lapse of time, the taker up shall pay into the county treasury, after deducting all costs, one half of the appraised value of such stray to the use of the county; and in default of such payment the county shall have a lien on such property to secure the payment of such money to the county and by order of the county court such stray may be sold by the sheriff, and after paying the amount due the county, the residue shall be paid to the taker up after the payment of all incidental costs.

SEC. 15. If any stray, legally taken up, gets away or dies without the fault of the taker up, he shall not be liable for the same.

SEC. 16. There shall be allowed the following reward for taking up strays: First, for every horse, mule or ass, one dollar; for every head of neat cattle, fifty cents; for all other kinds of stock, thirty cents each.

SEC. 17. If any person shall sell, swap, or take out of the Territory any stray before the legal title shall have vested in him, he shall forfeit to the county double the value of such stray, and may also be punished at the discretion of the court before whom he is tried, and forfeit double the value of such stray to the owner thereof.

SEC. 18. If any person unlawfully takes up any stray, or takes up any stray and fails to comply with the provisions of this act, or uses or works such stray in any manner contrary to this act, or uses or works it before having it appraised, or shall keep the same more than three days out of the county before he acquires title to the same, such offender shall forfeit to the county fifty dollars.

SEC. 19. If any person shall take up any stray, and violates or

fails to comply with this act, or abuses or injures such stray, the owner may recover of him double the amount of all injury sustained, with costs.

SEC. 20. If any of the officers mentioned in the foregoing sections of this act fail to perform the duties enjoined upon him by this act, he or they shall forfeit and pay to the county not less than five nor more than one hundred dollars.

SEC. 21. This act to take effect and be in force from and after the tenth day of February, A. D. 1860.

CHAPTER XLIII.

JOINT RESOLUTIONS.

Resolved by the Council, the House concurring, That the Secretary of the Territory be and is hereby instructed to procure for the use of the Territory of Jefferson, a "seal" to be a least two inches in diameter with the following device inscribed upon the same: The Rocky Mountains to appear in the distance, at their base the foot plains reaching and covering the foreground of the same, on which an emigrant wagon to be shown with emigrants carrying mining tools, with an inscription around the edge of the same (surrounding the above engraving) "The great seal of the Territory of Jefferson," and in the upper side of said circle to appear the words, "The people are the government."

This certifies that part third of this statute was passed and referred to the commissioners appointed by the first session of the general assembly of the Territory of Jefferson and that the same was again reported to the Council and House of Representatives at the call session and by them adopted.

Approved January 25th, 1860.

JAMES A. GRAY,
Speaker of the House of Representatives.

ELI CARTER,
President Pro Tem. of the Council.

L. W. BLISS,
Acting Governor.

PART FOUR.

SPECIAL ACTS.

CHAPTER I.

AN ACT

To Charter and Consolidate the Towns of Denver, Auraria and Highland.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That all that tract of country described as follows, to wit: commencing on the north-west side of the South Platte River, at that point where the most north-eastern portion of the north-east line of Denver Town Plat produced would touch high water mark; thence following said line to the north corner of said Town Plat, thence along the north-east line of said Town Plat to the east corner, thence along the south-east line of said Town Plat to the point where it intersects Cherry Creek, thence up said creek to the point where the south-easterly line of the Auraria Town Plat intersects it, thence along said line and said produced to high water mark on the north-west bank of the South Platte River, thence down said river to the point where the most south-westerly line of the Highland Town Site produced would intersect it, thence along said produced line and said line, thence following the line of said town plat with its angles to the westerly corner of said town site, thence along the north-westerly line of said town site to the northerly corner, thence along the most north-easterly line and the same produced to high water mark on the South Platte River, thence down said river to the point of beginning is hereby erected into a city, by the name and style of the City of Denver, Auraria and Highland; and the inhabitants thereof are hereby constituted a body, corporate and politic, by the name and style of the city of Denver, Auraria and Highland and by that name they and their

successors shall be known in law, have perpetual succession, sue and be sued, plea, and be impleaded, defend and be defended in any and all courts of law or equity, in all actions whatsoever, and may contract and be contracted with, may purchase, receive, and hold property, both real and personal, within said city, and may sell, lease and convey, or otherwise dispose of the same for the benefit of the city, may purchase, receive, hold, lease or convey property both personal or mixed, beyond the limits of the city, to be used for the burial of the dead, for the erection of water works, for the establishment of hospital, poor houses, work houses of correction, or for any purpose which may tend to the general good of the city, and may have a common seal and change the same at pleasure.

SEC. 2. The corporate powers and duties of said city, shall be vested in the mayor and the board of councilmen, to be styled the Council of—

SEC. 3. That the inhabitants of said city by the name and style aforesaid, shall have power to provide and establish by ordinance all necessary organic and municipal laws, rules and regulations for the government of the inhabitants, and enforcing the same; to pass all ordinances that may be necessary to carry any provision of this charter into effect; to pass any ordinance necessary for the well being of the inhabitants, and pass and provide for the enforcement of any and all ordinances which may be deemed proper and right, and not inconsistent with the Constitution of the United States and the Organic Act of this Territory.

SEC. 4. That the enacting clause of all ordinances shall be:—"Be it ordained by the Mayor and Councilmen of the City of Denver, Auraria and Highland," and all ordinances shall be published in such manner as may be provided by ordinance presenting the same, and no ordinance shall be enforced until so published.

SEC. 5. That all free white male citizens of the United States, or persons who have lawfully declared their intentions to become such, and all who are twenty-one years of age, and who shall have resided within the city limits sixty days next preceeding any election, shall be deemed qualified electors of said city, in the ward in which they may reside.

ARTICLE II.

SEC. 1. That the permanent officers of the City of Denver, Auraria, and Highland, shall be a Mayor, twelve Councilmen, City

Clerk, Recorder, Marshall, Assessor, Treasurer, Attorney, City Engineer, Street Commissioner, and such other officers as may be created by ordinance.

SEC. 2. That any person possessing the qualifications of an elector shall be eligible to an election or appointment to any office in said city.

SEC. 3. That the regular annual election for officers in said city shall be held at such time and in such manner as shall be fixed by ordinance and in such places as may be designated by the Mayor.

SEC. 4. That at each annual election there shall be chosen by the qualified voters of said county the following officers, to wit: a Mayor, twelve Councilmen—to be elected by Wards as they be established and apportioned by ordinance—City Clerk, Recorder, Marshall, City Attorney, Assessor, Treasurer, and Street Commissioner. All other officers shall be elected or appointed as may be determined by ordinance. All officers so elected or appointed shall hold their offices for one year, and until their successors are elected or appointed according to law, and the provisions of any ordinance touching such election or appointment unless sooner removed in such manner and for such offense as may be prescribed by ordinance.

ARTICLE III.

SEC. 1. There shall be in said city a city Council, which shall consist of a Mayor and Board of Councilmen which board shall consist of twelve members, said members to be chosen in the respective wards of the city as they may be apportioned thereto by ordinance.

SEC. 2. That the said city shall be divided by ordinance into not less than two, nor more than six wards, and the number of Councilmen to be elected in each ward shall be established by ordinance in proportion to the population of said wards respectively.

SEC. 3. That if the Mayor or any other officer of the city shall remove from the city, or any of the Councilmen shall remove from the ward from which he was elected, his office shall be thereby vacated.

SEC. 4. That the city Council shall judge of the qualification of its members and shall determine all contested elections in such a manner as may be regulated by ordinance.

SEC. 5. That a majority of the city Council shall constitute a quorum to do business, but a smaller number may adjourn from time to time, and shall have power to compel the attendance of absent members under such penalty as may be provided by the city Council for their own government.

SEC. 6. That the city council shall have power to determine the rules of its proceedings, punish disorderly conduct, and with the concurrence of two-thirds of its members, to expel any member.

SEC. 7. That the city council shall keep a journal of its proceedings and from time to time publish the same, and the yeas and nays, when demanded by any member, shall be entered in the journal.

SEC. 8. That no councilman shall be appointed by the city council to any office under the authority of the city during the time for which he is elected.

SEC. 9. That all vacancies in the city council shall be filled by election by the people.

SEC. 10. That the mayor, members of the board of councilmen, and all other officers of the city, whether elected or appointed, before entering upon the duties of their respective offices shall take and subscribe an oath that they will support the Constitution of the United States, and the organic and other laws of this Territory, and will faithfully comply with the provisions of this charter and will well and faithfully perform the duties of their office impartially and to the best of their abilities.

ARTICLE IV.

SEC. 1. That the mayor shall preside at all meetings of the city council and shall have a casting vote when the councilmen shall be equally divided and none other, he shall sign all bills before they become ordinances, but may refuse or decline to sign any bill which he shall deem inexpedient or in violation of any provision of the charter, and upon such refusal shall, at or before the next regular meeting of the city council after the passage of such bill, return the same with his objections thereto in writing. Thereupon the council shall reconsider said bill, and dispose of it by yeas and nays entered upon their journal, and if a majority of the whole city council shall vote yea on said bill, it shall become an ordinance without the signature of the mayor.

SEC. 2. That if the mayor shall neglect or refuse to return to the council at its regular meeting, any bill submitted to him for his signature, it shall become an ordinance without his signature.

SEC. 3. That the mayor shall have the superintending control of all the officers and affairs of the city, and shall take care that this charter and the ordinances of the city be complied with.

SEC. 4. That he shall sign the commissions or appointments of all officers elected or appointed by the city government.

SEC. 5. That he shall be a conservator of the peace throughout the city, and for this purpose may appoint or dismiss at pleasure any number of policemen that he may deem proper, and all such acts he shall report to the city council.

SEC. 6. That he shall, from time to time, communicate to the city council such information, and recommend such measures as in his opinion may tend to the improvement of the finances of the city, police, health, ornament and general prosperity of the city.

SEC. 7. That the mayor or any two of the councilmen shall have power to call special meetings of the city council, the object of which shall be submitted to the council in writing, and the call and object, as well as the disposition thereof, shall be entered upon the journal by the clerk.

SEC. 8. That the mayor shall have power, when he deems it necessary, to require any officer of the city to exhibit his account or other papers, and to make a report to the city council in writing, touching any subject or matter he may require pertaining to his office.

SEC. 9. That the mayor shall be active and vigilant in enforcing all laws and ordinances for the government of said city, and he shall cause all subordinate officers to be dealt with promptly for the neglect or violation of duty, he shall have such jurisdiction as may be vested in him by ordinance, over all places within five miles of the corporate limits of the city for the enforcement of any health or quarantine ordinance and regulations thereof.

SEC. 10. That at the first meeting of the city council after any general election for city officers, the board of councilmen shall elect from their own number a president *pro tem.*, who shall in the absence of the mayor preside over the city council.

SEC. 11. That when any vacancy shall happen in the office of any mayor by death, resignation, absence from the city, removal from office, refusal to qualify or otherwise, the president of the council for the time being, shall exercise the office of mayor, with all the rights, privileges and jurisdiction of the regular mayor, until such vacancy be filled or such disability be removed, or in case of temporary absence, until the mayor shall return, and during the time he shall receive the same compensation that the mayor would have been entitled to; and in case of such vacancy other than a temporary absence or disability, the person exercising the office of mayor shall cause a new election to be held, giving ten days notice thereof by proclamation.

SEC. 12. That the mayor, by and with the consent and advice of the board of councilmen, shall have power to fill all offices within the city which are not ordered by law or ordinance to be elected, and to remove from office any person holding an office created by ordinance.

SEC. 13. That he shall have power to fill all vacancies in any office except that of councilmen, until the end of the session of the council, which shall occur next after such vacancy, to remit fines and forfeitures, to grant reprieves and pardons.

SEC. 14. That the mayor of said city is hereby authorized to administer oaths, to take depositions and acknowledgments of deeds, mortgages and all other instruments of writing affecting the title of real estate, and certify the same under the seal of the city, and the same shall be received as valid throughout the Territory.

SEC. 15. That at the first meeting of the city council after any general election for city officers, they shall cause to be made out and certified by their clerk, of the election and qualification of the mayor, and within ten days thereafter he shall cause the same to be recorded in the recorder's office of the county, and a neglect of the mayor to qualify and cause the same to be recorded within ten days, shall be deemed a refusal to accept.

SEC. 16. That the mayor is hereby authorized to call upon every male inhabitant of the city over eighteen years of age, to assist in enforcing the laws and ordinances of said city; and, in case of necessity, call out the militia within said city, to aid in the suppression of any riot or enforcement of any ordinance, and any person who shall not obey such call shall forfeit to said city a fine not exceeding five hundred dollars.

ARTICLE V.

SEC. 1. That the recorder shall have exclusive original criminal jurisdiction of all offences arising under the ordinances of the city, and the person holding the office of recorder in said city, is hereby declared a justice of the peace, and shall have all the powers and jurisdiction of a justice of the peace in civil cases, and exclusive original jurisdiction in the all cases arising within the limits of the city.

SEC. 2. That he shall be a conservator of the peace, and his court shall be open every day, except Sunday, to hear, try and determine all cases wherein a breach of any ordinance of the city is charged, and he shall have power to issue all necessary processes to bring parties before him forthwith for trial.

SEC. 3. That he shall be entitled to the same fees as are allowed to Justices of the Peace.

SEC. 4. That all cases before the Recorder arising under an ordinance of this city an appeal may be taken and a final judgment wherein the amount exclusive of the costs exceeds twenty dollars, and in all cases before the Recorder and under the laws of this Territory the same right of appeal as is allowed by law in Justices' Courts.

SEC. 5. All appeals from the Recorder's Court shall be to the District Court of the Judicial District in which said city is located and the bond given by the appellant shall be the same as is required by the laws of the Territory in appeals from Justice's Courts.

SEC. 6. That any person brought before the Recorder charged with any offence under the ordinances of this city, wherein the penalty which may be imposed upon conviction exceeds fifty dollars, shall be entitled, if he demand it, to a trial by jury of six citizens of this city. Provided the person demanding such trial shall first pay into Court the costs of said jury, said costs to be refunded to said person if he be acquitted.

SEC. 7. That any person convicted before the Recorder of any offence under the ordinances of the city, shall be punished by fine or imprisonment as may be regulated by ordinance.

SEC. 8. That in the case of a vacancy occurring in the office of Recorder by death, resignation, or otherwise, or in case of sickness, absence, interest or disability of such Recorder to perform his duty, it shall be the duty of any acting Justice of the Peace of said township who may be designated by the Mayor to perform the same during such vacancy, absence, or disability.

ARTICLE VI.

SEC. 1. That the Marshal shall execute, either by himself or deputy, all papers, processes, and other papers issued by the Recorder, he shall also have authority to serve and execute all writs issued to him by any officer within the city, he is hereby declared a constable and vested with all the rights, powers, and jurisdictions by law conferred upon a constable of a township, and for services performed by him is entitled to the same fees as by law are allowed to constables.

SEC. 2. The Marshal shall perform all such duties as are by law or ordinance imposed upon him; he shall be a conservator of the peace, shall be vigilant and active in suppressing all riots, mobs and

disorders within the city, and for this purpose may arrest suspicious or disorderly persons without process, and take them before the Recorder for examination and trial. He shall have power to commit disorderly persons to the city prison, or other safe place of keeping, until examination or trial can be had, and he shall be the chief of the police of the city, subject to the supervision and control of the Mayor.

SEC. 3. He shall by virtue of his office, be collector of the taxes and all revenues within the city; shall give such bond and security for the faithful performance of his duties as Marshal, as may be prescribed by the City Council.

SEC. 4. The Marshal shall have the power to appoint one or more deputies, subject to such regulations as may be prescribed by the city Council, and for whose official acts he shall be responsible.

ARTICLE VII.

SEC. 1. That the City Council shall have power to levy and collect taxes upon all real and personal property within the limits of the city, for the purpose of general revenue, not to exceed one half of one per cent. upon the assessed value thereof in each year, in any manner to be previously provided by ordinance.

SEC. 2. That the City Council shall have power to provide for the sale of real estate for the non-payment of any tax due thereon, and for the time and manner of the redemption of the same; provided, that the owner thereof may redeem the same at any time within two years thereafter, by paying the full amount of said tax, and all taxes subsequently paid thereon by the purchaser, and all costs and charges thereon, together with interest at twenty-five per cent per annum.

SEC. 3 That the City Council shall have power to impose a poll tax not exceeding one dollar, on all able bodied male persons over the age of twenty-one years and under fifty.

SEC. 4. That to levy and collect a license, by tax, on auctioneers, taverns, hawkers, peddlers, dram shop, liquor sellers, pawnbrokers, shows, exhibitions, billiard tables, bowling and ten-pin alleys, or any number of pins the same may have, any and all gambling devices, hacks, wagons, or any other vehicles used within the city for pay, theatres, and theatrical exhibitions for pay.

SEC. 5. That to restrain, suppress and prohibit tippling shops, billiard tables, ten pin alleys, ball alleys, houses of prostitution,

and all disorderly houses and practice gaming and gambling houses, and all kinds of public indecencies.

SEC. 6. That to make regulations to prevent the introduction of contagious diseases into the city, to make quarantine laws for that purpose, and to enforce the same within five miles of the city.

SEC. 7. That to erect and regulate work-houses, poor-houses, and hospitals, and provide for the government and support of the same.

SEC. 8. That to make regulations to recover the health of the city, to prevent and remove nuisances, and to provide the city with water.

SEC. 9. That to open, widen, pave, grade, or otherwise improve or repair the streets, alleys and public grounds of the city.

SEC. 10. That to establish, regulate and support night-watch and police, and define the powers and duties of the same.

SEC. 11. That to provide for the lighting of the streets, and erecting of lamp posts.

SEC. 12. That to erect and establish market houses and market places, and to regulate and govern the same; and to provide for all other useful and necessary buildings for the use of the city.

SEC. 13. That to provide for and cause to be taken the census of the city.

SEC. 14. That to provide by ordinance, for the election of city officers, prescribe the manner of conducting the same, and the returns thereof, and for deciding contested elections.

SEC. 15. That to provide for the removal of the officers of the city for misconduct, and for the appointment of officers, their duty and compensation, not provided for in this chapter.

SEC. 16. That to regulate the police of the city, and to impose fines, forfeitures and penalties for the breach of any ordinance, and also for the recovery of the same, and in default of payment, imprisonment in the city prison, or to hard labor in the city.

SEC. 17. That to regulate and prescribe the power, duties and compensations of the officers of the city.

SEC. 18. That to require from all officers and servants elected or appointed, in pursuance of the charter, bonds and securities for the faithful performance of their duties.

SEC. 9 [19]. That to borrow money on the credit of the city, and pledge the revenue and public property of the city for the payment thereof; provided, that there shall not be paid, directly or indirectly, more than per cent. per annum; nor shall a greater debt be contracted than twenty-five thousand dollars, unless a two thirds majority of the qualified voters of said city, at a poll to be for that purpose, shall authorize the same.

SEC. 20. To appropriate money, and provide for the payment of the debts and expenses of the city.

SEC. 21. To divide the city into wards, and to apportion their representations in the city Council according to their population.

SEC. 22. That all ordinances of the city shall be passed pursuant to such rules and regulations as the city council may provide, and all ordinances of the city may be proved by the certificate of the clerk, under the seal of the city; and when published in book or pamphlet form, and purporting to be printed and published by authority of the city, shall be read and received in all courts and places without further proof.

SEC. 23. That the city Council shall cause to be published, once in each year, a statement of the receipts and expenditures of the city, and a statement of the financial condition of the city.

ARTICLE VIII.

SEC. 1. That the city Council shall have power to extend, open or widen any street, avenue, lane or alley, at any place within the city, and to create or open any new street, alley, avenue or lane, at their discretion.

SEC. 2. That when it shall be necessary to take any private property for opening, widening, altering or extending any street, avenue, alley or lane, the city shall make a just compensation therefor to the person whose property is thus taken.

SEC. 3. That if the amount of the compensation cannot be agreed upon, the Mayor shall appoint six disinterested freeholders of said city, who shall estimate and appraise the amount of said damages.

SEC. 4. That the said jury of freeholders, before entering upon their duties, shall be sworn to impartially assess the amounts of said damages, and shall return their written inquest to the Mayor, signed by each jurymen.

SEC. 5. That in estimating the amount of such damages, the jury shall estimate and consider the benefit resulting to, as well as the taxes sustained by the owner thereof.

SEC. 6. That the city council shall have power, by ordinance, to levy and collect a special tax on the owners of the lots on any street, avenue, alley or lane, for the purpose of curbing and paving the sidewalks, and for the purpose of grading, paving, macadamizing, lengthening, repairing, or otherwise improving said street, avenue, alley or lane.

SEC. 7. That the citizens of said city are hereby exempt from working on any road without the city limits, or for the payment of any tax for the construction of any such road.

ARTICLE IX.

SEC. 1. That the council of said city are hereby authorized and required to provide for the support of the common schools therein, at the expense of the city.

SEC. 2. That the city Council are hereby authorized to divide said city, by territorial limits, into school districts, in such a manner as shall be most convenient, having due regard to the accommodation of all the citizens.

SEC. 3. That the city Council are hereby required to purchase in fee simple, or to receive as a donation for said city, and at the expense of the same, in each of the school districts, a suitable lot of land, in some central and convenient situation, as a site for a school house thereon, and at any time thereafter to cause to be erected thereon a good and substantial school house, and to defray the expenses of the same, and also to pay for the lots of land purchased for such purpose. It shall be lawful, and is hereby made the duty of the city Council, annually to levy, or to cause to be levied, in addition to the other taxes of the city, a tax not greater than a on a dollar upon all property in said city liable to taxation for city purposes, until a sufficient sum shall be raised and collected from such tax to meet the expenses which shall be incurred for the purchase of lots of land, and for the erection of the school houses aforesaid.

SEC. 4. That for the purpose of more effectually supporting common schools in said city, and to secure the benefits of an education to all the children therein, it shall be the duty of the city Council, and they are hereby authorized to levy and collect an annual tax of one mill on a dollar upon all the property in said city subject to taxation for city purposes, which shall be appropriated to defray the necessary expenses of said schools.

SEC. 5. That said schools in the several districts in said city shall at all times be equally free and accessible to all children not less than six or more than twenty-one years of age; provided, that nothing in this act contained shall be so construed as to permit black or mulatto persons to attend said schools, or to receive instruction therein; but all taxes assessed upon black or mulatto

persons for school purposes in said city, shall be appropriated as the trustees hereinafter mentioned may direct, for the education of black and mulatto persons, and for no other purpose whatever.

SEC. 6. That at each annual election for city officers in said city, the qualified voters of each ward shall elect two judicious and competent persons, having the same qualifications as Councilmen, as Trustees of common schools, which Trustees shall constitute the Board of Trustees of common schools in said city, who shall hold their offices for one year, and until their successors shall be elected and qualified, and shall fill all vacancies that may occur in their own body during the time for which they shall have been elected, subject to the confirmation of the city Council.

SEC. 7. That said board shall have general superintendence of the common schools of said city, and from time to time make such regulations for the government and restriction of the children as shall appear proper and expedient. They shall appoint and employ the teachers and instructors for the same, and visit each and every school as often as once in every month. They shall cause a school to be kept in every school district for at least six months in each year. They shall certify to the city Council the correctness of all accounts and expenses incurred in the support of said school, and give the employed in such schools certificates of the amount due for such services. They shall at the close of every current year, report to the city council the state and condition of the several schools in said city, as well as the financial and other matters thereto, and a particular account of their administration thereof; provided, that no person shall be employed as teacher in any of said schools until he or she has been examined by the Board of Examiners, hereinafter mentioned, and have obtained from said Board a certificate of qualifications as to his or her competency and moral character.

SEC. 8. That all money levied and collected in said city for the support of common schools, shall be paid into the city Treasury, which money shall be kept in the city Treasury as a separate and distinct fund, and shall not be applied under any pretence whatever to any other use than that for which it was levied and collected; and separate and particular accounts of the receipts and expenditures thereof shall be kept by the Treasurer in a separate book, to be provided for that purpose.

SEC. 9. That a majority of all the members of the board shall constitute a quorum for the transaction of the business thereof.

SEC. 10. That if any member of the board shall absent himself from the regular meeting of said board for six successive weeks, unless by reason of sickness or absence from the city, or by consent of said board, his seat shall be declared vacant.

SEC. 11. That it shall be the duty of the city council to appoint five persons, residents and citizens of said city, of competent learning and abilities, as examiners of said schools and of the qualifications of the said teachers thereof; who shall be denominated the Board of Examiners in said city, who shall hold their offices for the term of two years, and all vacancies in such board shall be filled by the city council as they may occur.

SEC. 12. That it shall be the duty of the Board of Examiners to examine the qualifications, competency and moral character of all persons desirous of becoming teachers in said schools, or any of them a majority of whom shall grant certificates thereof to such as in their opinion shall be entitled to receive them. They shall from time to time strictly examine all said schools, the discipline and course of instruction in each, and shall make a report of their proceedings, and of all matters pertaining to the duties of their office, as often as once in each year, to the city Council.

SEC. 13. That the said city Council shall fix, by ordinance, such rules and regulations for the government of said schools and for the duties of the Board of Trustees and Examiners as may be necessary to carry the provisions of this act fully into effect.

SEC. 14. That the first election for officers under this charter shall occur on the third Monday after the passage of this charter, and that the regular annual election shall be held on the first Monday of October in each year thereafter.

Approved December 3rd, 1859.

JAMES A. GRAY,
Speaker of the House of Representatives.

HENRY ALLEN,
President of the Council.

R. W. STEEL,
Governor.

I hereby certify that the foregoing is a true copy of the original rolls on file in my office.

L. W. BLISS,
Secretary of Jefferson Territory.

CHAPTER II.

AN ACT

For the Incorporation of the Denver Mutual Insurance Company.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That R. B. Bradford, D. P. Wallingford, Amos Steek, E. W. Cobb, William Davidson, Jones & Cartright, Hunt & Clark, M. D. Hickman, H. H. McAfee, together with their legal successors, shall be and are hereby incorporated and created in a body politic and corporate, under the style of the Denver Mutual Insurance Company, and shall have power to sue and be sued, plead and be impleaded, contract debts, and hold credits, purchase, hold and sell real estate, and other property, and to have corporate seal and device.

SEC. 2. The said company shall have power to carry on a general insurance business, to issue such insurance policies upon such terms or rates of premium as the company may deem proper and to receive deposits of money and precious metals at such rates as the company may prescribe. Provided, that this act shall not be so construed as to allow said company to issue bank bills or other evidence of indebtedness to circulate as money.

SEC. 3. The capital stock of the company shall be fifty thousand dollars, which the company may increase to five hundred thousand dollars, to be divided into shares of one hundred dollars each. Provided, that no member or stockholder in said company shall own more than three thousand dollars of the capital stock of said company.

SEC. 4. The company shall have power to elect such officers and prescribe such rules and regulations for its government as may be thought proper. Provided, that no act may be performed by such company or its officers which is contrary to the constitution and laws of the United States and the Organic Act. and the laws of the Territory of Jefferson.

SEC. 5. The stockholders shall be individually liable to the amount of their respective shares of stock, for all the debts of the company.

SEC. 6. The principal office of the company shall be located at Denver City, and the company may establish branches for insurance at any points in the Territory. Provided, such branches shall

be under the control of the main office, and the business therein transacted, shall be regularly reported to the main office as the rules of the company may direct.

SEC. 7. The company shall hold its charter and the rights and privileges under such charter, for the term of ten years from the passage of this act. Provided, that the Legislative bodies hereafter exercising the legislative power of this Territory, shall have power to amend the same. And provided further, that nothing in this act shall be construed as a prohibition to any persons from engaging in the insurance business at any point in the Territory, at such time as they see proper.

Approved December 7th, 1859.

CHAPTER III.

AN ACT

To Incorporate the Golden Gate Town Company.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:—*J. S. Rodgers, Charles Fletcher, T. L. Golden, H. S. Hawley and W. G. Preston, their associates and successors are hereby constituted a body politic and corporate by the name and style of the Golden Gate Town Company, and by that name shall be competent to make contracts, sue and be sued, plead and be impleaded in all matters whatsoever; said company is authorized to have and use a common seal and to alter the same at pleasure and to make such by-laws as may be deemed necessary for the government of said company and the management of its affairs.

SEC. 2. The corporation hereby created shall have power to purchase and hold any quantity of land in the Territory of Jefferson where the town of Golden Gate is now located, not to exceed six hundred and forty acres, and to lay off the same into parks, squares, blocks and lots, and to sell and dispose of the same by deed.

SEC. 3. The said company shall have power to pass by-laws for the election of officers at such time or times as may be necessary to carry out the business of the company, and all deeds for the real estate of the company, shall be signed by officers as the said company may by by-laws designate, and when so signed, shall be deemed and held sufficient execution and authentication of such deeds in all courts or elsewhere.

Approved December 7th, 1859.

CHAPTER IV.

AN ACT

To Incorporate a Wagon Road Company from Auraria and Denver Cities to the South Park.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That Samuel Brown, J. H. Cochran, Joseph M. Brown, and with such other persons as may associate with them for that purpose, are hereby incorporated a body politic and corporate, by the name of the Denver, Auraria and South Park Wagon Road Company, and under that name and style shall be capable of suing and being sued, impleading and being empleaded, defend and being defended against, in law and equity, in all courts and places, be capable of contracting and being contracted with and of acquiring by purchase, or otherwise, real and personal estate and of holding and conveying the same, which may be needful to carry into effect fully the purposes and objects of this act.

SEC. 2. The company is hereby authorized and empowered to survey, locate, construct and complete a wagon road from the city of Auraria, thence up the east side of the South Platte River to a point eight miles above said city, thence across said river to the west side of the same, thence up said river on the west side to the town of Piedmont, at the base of the mountains thence by the nearest and most direct route to the South Park.

SEC. 3. The right and privilege of building and maintaining a bridge across the South Platte River, eight miles above the city of Auraria where said road crosses said river, is hereby granted to Samuel Brown, and such persons as may be associated with him for that purpose.

SEC. 4. The rates of toll on said bridge shall be as follows, to wit: each wagon, two horses, mules or oxen, twenty-five cents; every horse, with or without rider, ten cents; for every head of cattle five cents; footmen free.

SEC. 5. The said company shall not levy or collect any toll on said road except as specified in section four.

Approved December 7th, 1859.

CHAPTER V.

AN ACT

To Incorporate Cibolo Hydraulic Company.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That J. W. McIntyer, D. C. Vance, A. McPhaeder, D. McClery, F. B. Chase, with such persons as they may associate with them, and their successors be, and the same are hereby created a body corporate and politic under the style of the Cibolo Hydraulic Company, which shall have the power to sue and be sued, plead and be impleaded, to contract debts and hold credits and answer in any place where a company may.

SEC. 2. Said company shall have a capital stock of fifteen thousand dollars, which they may increase to twenty-five thousand dollars at any time hereafter, which stock shall be divided into shares of one hundred dollars each.

SEC. 3. Said company shall have power to construct a dam across clear creek in Jefferson county, at some point by them to be located within the distance of four miles above the town of Golden city, and to turn not more than one-third of the water of Clear creek at that point, into a canal or race or ditch. Provided, that the said company shall not at any time turn from the channel such an amount of water as to obstruct the work of or in any way injure parties below them on the stream holding claims of prior date to that of the company, and to carry such ditch down the canon on the right or south side of clear creek past Golden city, and along the table mountain canon, with power to make a branch on the south side of the table mountain and thence upon or near the divide between the South Platte river, at some point between the town Highland and the mouth of clear creek, with power to construct such branches as the company may choose to make.

SEC. 4. The company shall have the right to use the water so taken from clear creek for agricultural, mining or medical purposes, and may sell the water to other parties at reasonable rates, say not more than one dollar and twenty-five cents per inch.

SEC. 5. Said company shall have the right of way over all grounds upon the line of said canal. Provided, that when any claim is held under the laws of this Territory and the company shall wish the right of way over such claim, the compensation, if any, which the company shall pay for the right of way, shall be decided by three referees, one of which shall be chosen by the com-

pany and one by the party claiming damages, and a third by the other two, and said referees in assessing damages shall take into consideration the benefits accruing to the claimant's property as well as the damages done, and their decision of the case shall be final, unless there be fraud or bribery used, when the decision may be reversed by the courts of the Territory.

SEC. 6. Said company shall be bound to construct at least two miles of said canal within one year from the passage of this act.

SEC. 7. Said company may issue bonds, or rather evidences of indebtedness and sell the same upon such terms as they may prescribe.

SEC. 8. All the affairs of this company shall be regulated by the company, who shall have power to make such rules and regulations and elect such officers as may be necessary to secure the interest of the company.

SEC. 9. This act shall be in force from and after its passage and shall continue in full force and effect for the space of ten years after its passage.

Approved December 7th, 1859.

CHAPTER VI.

AN ACT

To Incorporate Fountain City Bridge Company.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That William H. Green and associates, are hereby made a body corporate and politic under the name and style of the Fountain City Bridge Company, with privileges to erect a bridge across the Arkansas River at or near the point where the old road now crosses said river, or at any other point within two and a half miles either way from said point, with exclusive privileges for the term of ten years after the completion of said bridge. Provided said bridge is completed within one year from the passage of this act.

SEC. 2. The rates of toll on the above mentioned bridge within the above mentioned points under the direct jurisdiction of said company, shall not be more than the following rates:—

For heavy train wagons,	\$4 00
“ light “ “	2 50
“ Pack animals and horsemen,	50
“ Loose cattle per head,	25
“ Sheep and hogs per head,	10
“ Footmen,	10

Approved December 7th, 1859.

CHAPTER VII.

AN ACT

To Incorporate the Boulder City, Gold Hill, and Lefthand Creek Wagon Road.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That T. J. Graham, E. D. Steele, William Pell their associates and assigns, be and are hereby created a body corporate and politics by the name and style of the Boulder City, Gold Hill and Lefthand Creek Wagon Road Company, and by that name shall be capable in law and equity to sue and be sued, to plead and to be impleaded, to defend and be defended in any court having proper jurisdiction, and shall be, and are hereby invested with all the powers and privileges and immunities which are or may be necessary to carry into effect the purposes and objects of this act.

SEC. 2. The said company are hereby authorized and empowered to locate and construct and finally complete a wagon road not exceeding one hundred feet in width commencing at Boulder City and running thence to Gold Hill and Lefthand Creek.

SEC. 3. The capital stock of said company shall consist of three hundred shares of twenty-five dollars each, with the privilege of increasing the same to any amount sufficient to carry into effect the objects and intent of this act, the immediate government and direction of said company in its affairs, shall be in conformity with the constitution and by-laws that may be adopted by said company.

SEC. 4. The directors are hereby authorized to establish toll gates and appoint toll gatherers, and demand and collect toll upon the road, at rates not exceeding for two wheel vehicles one and a half cents per mile; for four wheeled vehicles three cents per mile; and for every head of oxen attached to a vehicle or otherwise, three fourths of a cent per mile, and for every horse, mule or jack, whether attached to a vehicle or otherwise, one cent per mile.

SEC. 5. Provided, said company shall build a good wagon road to compare with other toll roads and complete the same within twelve months from and after the passage of this act.

SEC. 6. Said company shall be holden to pay all damages that may arise to any person or persons, corporation or corporations by taking their lands for said road in the manner prescribed by law, for the recovery of damages happening by the laying out of Territorial roads the said company shall have power to make, ordain, or establish all such by-laws, rules and regulations as they may deem necessary and expedient to accomplish the designs and purposes, and to carry into effect the provisions of this act. Provided, however, the same be not repugnant to the laws of this Territory, or of the United States.

SEC. 7. This act to take effect and be in force from and after its passage and to continue for ten years.

Approved December 7th, 1859.

CHAPTER VIII.

AN ACT

To Incorporate the Clear Creek Lumbering Company.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That John C. Wall, John E. Carter, their associates and successors, and such other persons as may associate themselves with them be and are hereby declared and made a body corporate under the name and style of the Clear Creek Improvement and Lumbering Company, for the purpose hereinafter set forth.

SEC. 2. That the said company shall, in consideration of the provisions hereinafter provided, proceed to improve the channel of said creek from the eastern boundary of Golden City to a point twenty-five miles above, on said creek, or as far as they may deem advisable, so as to permit the successful driving of logs and other loose timber down the same; provided, the right to improve the channel of said creek, shall not interfere with the right of persons or companies to construct dams across said creek at any point between the limits herein mentioned for the purposes of mining or running machinery or irrigation, provided such dams be constructed with a slide of not more than forty degrees elevation, and not less than ten feet wide across the creek and fifteen feet long, over which logs, lumber, timber, poles and wood may pass.

SEC. 3. The said company shall have two years from the passage of this act to complete the same, and in case of failure to do so shall forfeit all privileges, immunities and advantages contained in this charter.

SEC. 4. That the company shall have exclusive privilege of rafting logs, timber, and other materials within the limits above mentioned for the term of ten years, under the restrictions contained in section five; provided, all persons and companies shall have the privilege of rafting, driving or otherwise floating down said creek within the limits herein mentioned, such lumber, timber and wood as they may desire, by paying the toll in section five provided for.

SEC. 5. The said company shall have power to charge and collect according to law, a toll and boomage upon all logs, sawed lumber, timber and poles at the following rates:—

Logs per thousand feet, board measure,	\$5 00
Sawed lumber,	5 00
Hewed timber,	5 00
Poles six inches in diameter, each,	15
Any other timber, per cord,	1 00

SEC. 6. Said company shall have the right to construct a boom or booms for the purpose of securing theirs and others logs, timber, poles and other lumber belonging to other parties; provided, that lumber or other timber, shall be delayed or stopped an unreasonable length of time, after all dues for toll or boomage, as heretofore provided, has been paid.

SEC. 7. Said company shall be capable of suing and being sued by the name and style used in this bill in all courts of law and equity, shall have a common seal and may alter the same at will, and be capable in law of acquiring, holding and conveying property, both real, personal and mixed for the purposes herein mentioned.

SEC. 8. The capital stock of said company shall not be less than two thousand dollars, and may be increased from time to time as occasion may require.

SEC. 9. Said company shall have power to make such rules and regulations for their government, as are proper and not inconsistent with the laws of this Territory or of the United States.

Approved December 7th, 1859.

CHAPTER IX.

AN ACT

To Incorporate the Denver, Auraria and Colorado Wagon Road Company.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That Joseph Casto, Horner Fellows, Christian Dorsey, Solomon Shrop, with such other persons as may associate with them for that purpose, are hereby incorporated by the name of the Denver, Auraria, and Colorado Wagon Road Company, and under that name and style shall be capable of suing and being sued, defending and being defended in law and equity, in all courts and places; may make and use a common seal and alter and renew the same; be capable of contracting and being contracted with, and are hereby invested with powers, franchises and immunities and privileges, and conveying real estate and personal estate which may be needful to carry into effect the purposes and objects of this act.

SEC. 2. The said company is hereby authorized and empowered to survey, locate and construct, complete, alter and maintain a wagon road from Denver City via Auraria, Baden, Mt. Vernon, South Park, Tarryall, Fort Jones and terminating at Saratoga West on the Blue Fork.

SEC. 3. The said company shall have the right to appropriate one hundred feet wide on the route, of the entire length of road, to use of said company in building said road.

SEC. 4. The capital stock of said company shall be ten thousand dollars, which may be increased from time to time to any sum not exceeding the amount expended on account of said road, which shall be divided into shares of one hundred dollars each, issued and transferable as may be ordered by the directors of said company, and shall be deemed personal property.

SEC. 5. The corporate powers of said company shall be vested in a board of directors not to exceed ten in number, of which the president, vice president and secretary shall be members *ex officio*.

SEC. 6. The officers of this company shall consist of a president, vice president, secretary, engineer, superintendent and treasurer, who, together with the board of directors, shall be elected annually, and hold their office until their successors are elected and qualified.

Each share shall be entitled to one vote. Members may vote by proxy. Vacancy in any office may be filled by a vote of two-thirds of the remaining directors.

SEC. 7. The company shall have power to make, ordain and establish such by-laws, rules and regulations deemed expedient for the objects and interests of the company. Provided, they do not conflict with the organic act of this Territory.

SEC. 8. The company shall have power to establish such rates of toll and collect the same as is guaranteed to them by this act. It shall be the duty of said company immediately or as soon as practicable, to cause to be placed in the office of the Secretary of the Territory, a map and profile of said road and all its branches.

SEC. 9. Said company shall complete said road to Tarryall on or before the 15th day of May, A. D. 1860, and to Fort Jones on or before the 1st day of June, A. D. 1860, and to Saratoga West on or before the 1st day of July, A. D. 1860.

SEC. 10. The rate of toll on said road shall not exceed one dollar and seventy-five cents from Mt. Vernon to Tarryall, one dollar from Tarryall to Fort Jones, and one dollar from Fort Jones to Saratoga West, and tolls are not to be collected on any part of the road until the same is in good condition for teams to pass over, and only in proportion to the amount expended in building said road; the above tolls to be collected from wagons drawn by three yoke of oxen, cattle or like number of horses or mules, and fifty cents for each additional team from Mt. Vernon to Tarryall, and twenty-five cents from Tarryall to Fort Jones, and twenty-five cents from Fort Jones to Saratoga West.

SEC. 11. The grade on this road shall in no place exceed ten feet rise in one hundred feet, and shall be bridged when needed and in every way be made a safe road for team at all times and seasons of the year when snow does not make it impassable.

SEC. 12. Nothing in this act shall prevent any other company from building a road on said route, point six and one half miles south west of Mt. Vernon, near Bergen's Ranch or any other point west of the point aforesaid, and crossing and following such road whenever it is absolutely necessary. Said company crossing or traversing said road, being at equal expense of building and keeping that portion of the road in repairs. Provided, that nothing herein contained shall be so construed as to allow this company to interfere with, or run over the route of the St. Vrain, Golden City, and Colorado Wagon Road Company in any manner, except as set forth in the charter of said company.

SEC. 13. This act shall take effect and be in force for the term of two years from the 4th day of July, A. D. 1860, unless the company sooner make it a free road.

Approved December 7th, 1859.

CHAPTER X.

AN ACT

To Incorporate the St. Vrain, Golden City, and Colorado Wagon Road.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That John W. McIntyre, J. M. Ferrell, Harry Gunnell, and Lucien W. Bliss, with such other persons as may associate with them for that purpose, are hereby incorporated a body politic and corporate, by the name and style of the St. Vrain, Golden City and Colorado Wagon Road Company; and under that name and style shall be capable of suing and being sued, impleading and being impleaded, defending and being defended against in law and equity, in all courts and places, may make and use a common seal, and alter and renew the same, be capable of contracting and being contracted with, and are hereby invested with all powers, privileges, immunities, and franchises, and acquiring by purchase or otherwise, and conveying real estate and personal estate, which may be needful to carry into effect fully the purpose and objects of this act.

SEC. 2. The said Company is hereby authorized and empowered to survey, locate, contract, complete, alter and maintain a Wagon Road from St. Vrain, by way of Arrappahoe and Golden City, to Saratoga West in Saratoga County.

SEC. 3. The said company are hereby authorized and shall have the right of way upon, and may appropriate to its sole use and control, for the purpose contemplated herein, land not exceeding one hundred feet in width, through its entire length, upon such route as may be determined, and may take more land, earth, or material as may be necessary for the construction or completion, or maintaining said road. Provided, that no land shall be taken by said corporation for or in the construction of said road, upon

which settlers are located and have right of claim thereon, without full and just remuneration thereof, which remuneration or damage shall be ascertained by three commissioners, one to be chosen by the corporation, one by the party claiming to be injured, and the third to be chosen by the two chosen as above; and when said commissioners are so chosen, they shall proceed to examine the lands proposed to be taken, also the damages done and sustained in consequence of the taking of said lands for said road, and shall give to the party claiming to be injured, a copy of their decision, and one copy shall be filed in the office of the Secretary of the corporation, and said corporation shall, before taking said land claimed to be damaged, pay or tender to the party injured the amount so awarded such person or persons by said commissioners, and when such tender is made, then said corporations are hereby authorized to take such land for the construction of said road as is by this authorized, provided the other party shall have the right of appeal from the decision of the referees, to the District Court.

SEC. 4. The capital stock of said corporation shall be twelve thousand dollars, which may be increased from time to time to any sum not exceeding the amount expended on account of said road, divided into shares of fifty dollars each, which shall be deemed personal property, issued and transferred as may be ordered by the directors or laws of said company.

SEC. 5. All the corporate powers of said company, shall be vested in and exercised by, a board of directors, and such officers and agents as they may appoint. The board of directors shall consist of eleven persons, stockholders, who shall be chosen annually by the stockholders, each share having one vote by person or proxy, and continue in office until their successors are elected and qualified. Vacancy in the board may be filled by a vote of two thirds of the remaining directors.

SEC. 6. The president and directors for the time being, are hereby empowered, or their officers or agents, to execute all the powers herein granted for the purpose of surveying, locating, and constructing said wagon road, and authority for the control and management of the affairs as may be necessary to carry into effect the intent of this act.

SEC. 7. The said company shall have power to make, ordain, and establish such by-laws, rules and regulations deemed expedient for the objects and interests of the company, provided they do not conflict with the laws of the United States or the organic act; they shall have power to establish such rates of toll, and collect the same, and matters and things respecting the use of said road.

SEC. 8. The rates of toll upon said road shall be as follows, to wit: From St. Vrain to Golden City free; from Golden City

to Tarryall, on the middle fork of the south platte, not exceeding two dollars for each wagon drawn by not exceeding three yoke of cattle, two span of horses or mules, and fifty cents extra for each yoke of oxen or span of horses or mules; and from Tarryall to Jones' Fort, on the blue fork of the Colorado River, one dollar for the same description of teams, twenty-five cents extra as before; and from Jones' Fort westward to Saratoga West, two cents per mile for each team and wagon, as aforesaid, with one half cent addition per mile for each extra yoke of cattle, span of horses or mules, as far as may be necessary to extend said road, and that toll shall not be charged on any part of said road only as completed; and that in proportion to the whole distance and proportionate expense of making said road, and no toll shall be charged on any other than the main road herein specified, and shall charge no toll on said road except when it is kept in good repair.

SEC. 9. Said corporation shall within a reasonable time after said road is definitely located, cause a map and profile to be made of the road, and file the same in the office of the Secretary of the Territory.

SEC. 10. In case of refusal or neglect on the part of Stockholders to make payment as required, the shares of such delinquent may after thirty days' public notice, be sold at public auction, and the surplus, if any, deducting payments and interest to be paid to each stockholder.

SEC. 11. Said company shall commence the construction of said road within ten days after the passage of this act, and shall complete the same within nine months thereafter, and said company shall so finish such road that it shall at no place have a grade to exceed twenty to each one hundred feet, and of sufficient width for two teams to easily pass each other abreast, before they shall be entitled to collect any toll. Provided, that for the present they may only make places for teams to pass conveniently, and not more than thirty rods apart.

SEC. 12. Provided that nothing herein contained shall be so construed as to prevent any other road from crossing the same, or from running along side road at any point where it may be impracticable to run such other road in any other place; provided, the person or company wishing to build such other road, shall pay an equal proportion of the expense of building the road at such place of crossing or running together, or shall pay this company a reasonable compensation for passing over such road; and provided that the company or person wishing to build such other road, shall arrange their toll gate in such a manner as not to interfere with the tolls to be collected by this company; and provided further, that the toll gates established on said road, shall not be erected so as to interfere with the tolls allowed other companies, and in

no case shall any companies consolidate so as to increase the toll allowed other companies, and in no case shall any companies consolidate so as to increase the toll allowed by law.

SEC. 13. Provided, that nothing herein contained shall be construed to grant this company banking privileges of any character.

Approved December 7th, 1859.

CHAPTER XI.

AN ACT

To Incorporate the Arrappahoe Ditch Company.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That S. B. Allen, C. R. Harris, and H. H. Tomheart, together with their associates, are hereby constituted a body politic and corporate, by the name and style of the Arrappahoe Ditch Company, and by that name shall be competent to make contracts, sue and be sued, plead and be impleaded, in all matters whatsoever, both in law and equity, and shall have all the powers and privileges usually granted such corporations, and which may be necessary for the proper carrying into operation the objects of said company.

SEC. 2. The company hereby incorporated, shall have power to hold by purchase or claim, a tract of land along the line of said ditch, not exceeding twenty feet in width, on each side of the same; provided, that said land be not valuable as mining claims.

SEC. 3. Said company shall have the right and privilege of cutting a ditch or canal, commencing at a point on Clear Creek, about ont half mile below the town limits of Golden City, thence along the banks of Clear Creek via Arrappahoe to the mouth of Ralston's Creek, having the right to run a line of said ditch north of the town of Arrappahoe; at that point the object of said ditch or canal is to afford water for mining purposes, and also for agricultural purposes.

SEC. 4. Said corporation shall have the right of way for said ditch or canal wherever it shall pass; provided, that said company shall pay all damages that may be assessed by a jury empaneled for that purpose, by reason of cutting said ditch over or through any claims which shall have been laid or made prior to the time of locating said ditch.

SEC. 5. The said company shall have power to pass by-laws for the government of its members.

SEC. 6. This act shall continue in force for and during the term of twenty years; provided, that nothing in this act shall be so construed as to prevent another company which now has a ditch out of the Canon of the table mountain, and continuing the same north of the town of Arrappahoe, nor to prevent them from crossing the lands, or ditch, or smaller ditches; conditioned, that the said company shall not obstruct the water nor do any injury to the said Arrappahoe ditch company.

SEC. 7. Provided that nothing contained in this charter shall authorize said company to run their ditch along or across any road which has heretofore been in public use as a highway, unless they shall, by bridge or grading, make such road as good and safe for travelers as it was before making such ditch across or along such road.

Approved Dec. 7th, 1859.

CHAPTER XII.

AN ACT

To Incorporate the South Platte River Improvement and Lumbering Company.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:—*That W. A. McFadding, J. D. Henderson, J. C. Sanders, C. J. Stevens, J. Easter, their associates and successors, be, and are hereby, declared and made a body corporate under the name and style of the South Platte River Improvement and Lumbering Company, for the purposes hereinafter set forth, viz:

SEC. 2. That the said company shall, in consideration of the provisions hereinafter provided, proceed to improve the channel of said river from the city of Auraria to a point twenty miles above the mouth of the Canon, so as to permit the successful drifting of logs and other loose timber down the same; provided, the right to improve the channel of said river shall not interfere with the right of persons or companies to construct dams across said river, at any point between the limits herein mentioned, for purposes of irrigation, mining or running machinery; provided,

such dams be constructed with a slide, of not more than forty degrees elevation, and not less than ten feet wide across the river, and fifteen feet long, over which logs, lumber, timber, wood, and other material may pass.

SEC. 3. The said company shall have two years from the passage of this act, to complete the same, and in failure to do so, shall forfeit all privileges, immunities, and advantages contained in this charter.

SEC. 4. That the company shall have exclusive privilege of rafting logs, lumber, and all other materials, within the limits above mentioned, for the term of twelve years, under the restrictions contained in section five; provided, all persons and companies shall have the privilege of rafting, drifting, or otherwise floating down said river, within the limits herein mentioned, such lumber, timber, wood, and other materials as they may desire, by paying the toll provided for in section five.

SEC. 5. They shall have power to charge and collect according to law, a toll and boomage upon all logs, sawed lumber, timber, and poles, at the following rates, viz: Logs, per M, board measure, five dollars; sawed lumber, per M, board measure, five dollars; hewed timber, per M, board measure measure, five dollars; poles, six inches in diameter, twenty-five cents each; any other timber, per cord, one dollar.

SEC. 6. The said company shall have the right to build a boom or booms for the purpose of securing their and other logs, timber, poles, lumber, and other materials belonging to other parties, providing that no lumber, logs, wood or other materials, shall be detained or stopped longer than is necessary to pass said lumber, logs, wood and other materials through the boom, narrow places, and chutes in the river, in regular order in which they may arrive, unless caused by unavoidable accident, and the company shall be liable to all damages which may be caused by delay in consequence of the fault or neglect of the company in not keeping the river, booms, and other fixtures in said river, in good repair for the speedy rafting and floating of the character of materials above mentioned; provided, that the company shall not have the exclusive use of the booms, narrow places, and chutes in said river, to the exclusion of other parties; but all materials shall be passed in the order in which they arrive; provided, that the tolls herein authorized shall not be collectable until the materials arrive at their point of destination or the last boom of the company, and the company shall have lien on all materials for their tolls.

SEC. 7. That said company shall not collect any toll or tolls of parties rafting on said river until they receive authority to do the same, from a commission to be appointed by the Governor, who

shall inspect the work done by the company, and shall authorize them to take toll when they have improved the river so that the same is safe for rafting purposes.

SEC. 8. The said company shall be capable of suing and being sued by the name and style used in this bill, in all courts of law and equity; shall have a common seal and alter same at will, and be capable in law of acquiring, holding and conveying property, both real, personal and mixed, for the purposes herein mentioned.

SEC. 9. The capital stock of said company shall not be less than fifty thousand dollars, and may be increased to one hundred thousand dollars.

SEC. 10. The company shall have power to make such rules and regulations for their government, as are proper and just, and not inconsistent with the laws of this Territory.

Approved Nov. 28, 1859.

CHAPTER XIII.

AN ACT

To Incorporate the Consolidated Ditch Company.

SEC. 1. *Be it enacted by the General Assembly of the Provisional Government of the Territory of Jefferson, the Governor approving:*—That W. G. Russell, B. F. Chase, J. M. Wood, R. W. Steele, C. R. Roberts, Dupee, A. H. Owens, Henry Allen, Wm. M. Slaughter, G. W. Cleveland, their associates, successors, heirs and assigns, shall have, for thirty years from the passage of this act, the exclusive privilege of building and keeping in repair a ditch or canal for the purpose of conveying water to the miners along the route of said ditch, and charging for the same. The ditch is located in Mountain County, beginning on the middle Fork of Clear Creek, about twelve miles in a westwardly direction from Gregory's Diggings, as the survey and work already done on the line of said ditch will more fully show; running thence in an eastwardly direction to the head of Russell's Gulch, then branching one branch on the South of said Gulch, and extending down the

same on the side of the mountain, and hereby granting the right of way and privilege of this arm of the ditch, to the mouth of said Russell's Gulch on the south side. The other branch of the ditch to have the right of way on the north side of said Russell's Gulch, continuing along the side of what is known as Quartz Mountain, to Quartz Hill, or the Patch Diggings; thence along the summit of said hill to a divide at the south-east side of said hill, thence following said divide either by flume or otherwise, to the hill east of the Missouri Flats; thence following said hill to a convenient place for another branch, the south going into what is known as the Lake, south of Gregory and Mountain City, which lake the company shall have the exclusive right to use as a reservoir, and continue the same branch through the same, down what is known as Lake Gulch, for a distance not exceeding five miles. The north fork shall continue around said hill or mountain to Gregory's Diggings, and further if necessary, not exceeding three miles.

SEC. 2. Said company shall have the exclusive right of way on said ditch and branches, for the distance of thirty rods on each side; to have the use of timber, stone and other material, for repairing or constructing said ditch.

SEC. 3. They shall also have the privilege of claiming or purchasing along the line of said ditch, the amount of five acres for each saw, quartz, steam mill, or such other machinery whose motive power is furnished by water from said ditch.

SEC. 4. The said company to have for the time specified above, the exclusive right to the use of all the water in said middle fork of Clear Creek, at a point where said ditch intersects said creek, leaving, however, at all times, sufficient to supply the claimants below, whose rights attached before the commencement of the building of said ditch.

SEC. 5. That said company shall not have the power to appropriate claims or other public lands, bona fide worked or improved, unless by first compensating the owner or owners of the same; said compensation to be ascertained as elsewhere directed.

SEC. 6. The officers of said corporation shall consist of a President, Vice President, Secretary, Treasurer, Superintendent, Collector, and such other officers as their articles mention, which officers shall constitute a Board of Directors. The said company shall have power to make all needful rules and regulations for their government.

SEC. 7. The said company is hereby made a body corporate and politic, capable of suing and being sued, to plead and being impleaded in law and equity.

SEC. 8. Nothing in this act is intended to interfere with miners' rights on lands where gold exists in paying quantities, except the line of the ditch, which shall not be interfered with by any or against the consent of the said company.

Approved December 2, 1859.

JAMES A. GRAY,
Speaker of the House of Representatives.

ELI CARTER,
President pro tem. of the Council.

INDEX.

ACTIONS penal	27
to record real property.....	132
parties to	97
ARREST by officer	29
ARRAIGNMENT of defendants	38
ATTORNEY prosecuting or county.....	79
ATTORNEYS and counsellors	84
ACKNOWLEDGMENTS	88
ARBITRATIONS	118
APPEALS	120
AUDITOR	169
ATTORNEY general	173
ATTACHMENTS	183
ARRAPPAHOE ditch company charter.....	293
BAIL, in what cases admitted	63
deposit of money for.....	64
forfeiture of	65
BILLS	89
BOULDER CITY and gold hill road company charter.....	285
COUNTERFEITING	12
CONSPIRACY	19
CHASTITY offences against	19
CHEATING	21
CRIMES and offences, general definition of.....	22
general provisions as to.....	22
CITIES and villages police in.....	25
COUNTIES	78
unorganized	79

COUNTIES boundaries	190
court, jurisdiction and duty of	194
officers, election of	198
treasury	199
CLERKS suspension of	82
CLAIMS how taken	213
on land	92
against estates how filed	148
payment of	149
CONVEYANCE of land property	92
COURTS powers and duties defined	252
supreme duties defined	179
district duties defined	181
jurisdiction defined	255
CODIFYING laws committee appointed	155
committee payment of	260
CIBOLE hydraulic company charter	283
CLEAR CREEK lumbering company charter	286
DEMURRER	40
DEPUTIES	82
DEPOSITIONS	128
DECEASED PERSONS estates of	139
DISTRICTS council defined	189
judicial defined	255
DENVER, Auraria and Highland charter	268
" mutual insurance company charter	280
" Auraria and South Park road company charter	282
" Colorado road company	288
DITCH consolidated company	296
EXAMINATION by magistrate	30
of witnesses	62
EXCEPTIONS bill of	50
EXECUTIONS in criminal cases	56
in civil cases	114
EVIDENCE	124
documentary	126
EXECUTORS how appointed and duties of	142
to account for estate	153
ELECTION of county precinct officers	198
ENCLOSURES and trespassing animals	225
ESTRAYS posting of	261
ELECTIONS	157
FORGING and counterfeiting	11
FRAUD	21
FORCIBLE ENTRY and detainer	133
FIRING woods and prairies	225

FEES of officers	245
docket fee in district and supreme court	250
to be paid for recording charters	251
FOUNTAIN CITY bridge company charter	284
GRAND JURY powers and duty of	3
GOVERNOR term of office, salary &c.	167
powers and duties further defined	174
GENERAL ASSEMBLY payment of	257
GOLDEN GATE town charter	281
INDICTMENTS limitation of	27
finding and presentation of	35
forms and requisites of	36
setting aside of	39
pleas to	41
IMPEACHMENTS	60
INFORMATION to magistrate	28
INTEREST rates of	90
INFORMATION	121
INJUNCTIONS and orders	134
JUDICIAL system established	178
IRRIGATION act concerning	214
INCORPORATION act concerning	215
of town sites	220
JURY challenging of	42
JURIES	95
JUDGMENTS	52
arrest of	52
by confession	112
by default	113
by liens	122
JUSTICES OF THE PEACE jurisdiction of	336
courts and proceedings therein	237
HABEAS CORPUS	69
KEHLER sheriff election confirmed	256
LIMITATION of indictments and penal actions	27
LAND claims on	92
LIEN mechanics	228
LICENSE	233
MISCHIEF malicious	16
MORALITY offences against	19
MAGISTRATES	27
MARKS of animals	87
MARRIAGES	94

MORTGAGE foreclosure of	123
MANDAMUS writ of	130
MISCELLANEOUS PROVISIONS	138
MECHANICS LIEN	232
MINERS' courts and meetings legalized	250
MILITARY companies	252
NEW trials	51
NOTES	88
NUISANCE	131
NOTARIES PUBLIC	200
OFFENCES AGAINST the lives and property of individuals	3
property	7
public justice	13
the right of suffrage	18
chastity and morality	19
public peace	20
public, prevention of	23
OFFICERS jurisdiction of	26
OATHS and acknowledgments	88
PUBLIC JUSTICE offences against	13
peace offences against	20
officers jurisdiction of	26
officers qualifications defined	175
PEACE security to keep	23
POLICE in cities and villages	25
PROCESS resistance of	25
PARDON of fines and punishments	66
PUNISHMENT commutation of	65
for offences defined	55
PARTIES to actions	97
PLEADINGS	103
PROPERTY of deceased persons	146
PRECINCTS organization of	192
RIOTS suppression of	26
RECOGNIZANCE forfeiture of	65
REMOVAL from office	83
RECORDER county	85
RELIEF writs for	130
REAL PROPERTY action for recovery of	132
of deceased persons, disposition of	152
REPLEVIN writs of	138
ROADS county	201
REVENUE territorial and county	205
STOLEN GOODS receiving of	10
SUFFRAGE offences against the right of	18

SECURITY to keep the peace.....	23
SEARCH WARRANT on proceedings.....	66
STATUTES authentication of	77
when to take effect.....	78
SHERIFF	80
suspension of by district court.....	82
SEALS private officers may use.....	251
private	91
SUITS when brought	99
manner of commencing	100
SECRETARY of Territory.....	168
SUPREME COURT duties defined.....	179
SEAL of Territory.....	264
ST. VRAIN, Golden City and Colorado W. R. company charter	290
SOUTH PLATTE River improvement company charter	294
TRIAL	44
TENDER	90
TRANSFER of personal property.....	91
TRIAL and its incidents.....	107
TESTIMONY how procured.....	127
TRESPASS	131
TRESPASSING animals	226
UNMARRIED WOMEN enticing away.....	5
VERDICT	48
VENUE change of	102
WRIT OF ERROR when allowed and how taken	58
judgment upon	59
WRITS of replevin	188
of certiorari	137
attachment	185
WASTE	131
WITNESS compelling attendance of	61
examination of	62
WILLS how proved and allowed.....	140
how made	226
WARRANTS payment of	259
redemption of	259
form of	261

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....



TAN D 1860
Provisional laws and joint res
Stanford Law Library



3 6105 044 822 034